

UCLA SCHOOL OF LAW TRANSCRIPT LEGEND

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The following information is offered to assist in the evaluation of this student's academic record.

COURSE NUMBERS: (as of 2010) First year and MLS courses are numbered 100-199, advanced courses 200-499, seminars 500-699, experiential courses 700-799, externships 800-899, short courses 900-999. (1978-2010) First year courses are numbered 100-199, advanced courses 200-399, clinical courses 400-449, externships 450 – 499, and seminars 500 – 599.

CREDITS: Beginning 1978, credits are semester units, prior to that time, credits were quarter units.

EXPLANATION OF CODES FOUND TO THE RIGHT OF A COURSE ON OLDER TRANSCRIPTS

CODE	EXPLANATION
PU	Courses graded on a pass/Unsatisfactory/ No Credit basis
T1	First term of a multiple term course
2T	Final term of a multiple term course, unit total for all terms combined
TU	Final term of a multiple course graded on a Pass/Unsatisfactory/No Credit basis
UT	Final term of a multiple course graded on a Pass/Unsatisfactory/No Credit basis, unit total for all terms combined.

GRADE POINT AVERAGE (GPA) CALCULATION: The GPA is calculated by dividing grade points by graded units attempted. Transfer credits are not included in the UCLA GPA.

EXPLANATION OF GRADING SYSTEM 1995 – Present

Grade & Grade Points	JD, LLM and SJD Student Definitions	MLS Student Definitions
A+ = 4.3	Extraordinary performance	Extraordinary performance
A = 4.0 A- = 3.7	Excellent performance	Superior Achievement
B+ = 3.3 B = 3.0 B- = 2.7	Good performance	Satisfactorily demonstrated potentiality for professional achievement in field of study
C+ = 2.3 C = 2.0 C- = 1.7	Satisfactory performance	Passed the course but did not do work indicative of potentiality for professional achievement in field of study
D+ = 1.3 D = 1.0	Unsatisfactory performance	Grade unavailable for MLS students
F	Lack of understanding of major aspects of the course No credit awarded	Fail
P	Pass (equivalent of C- and above) Not calculated into the GPA	Satisfactory (achievement at grade B level or better)
U	Unsatisfactory (equivalent to grades D+ and D)	Grade unavailable for MLS students
NC	No credit (equivalent to a grade of F) No unit credit awarded	No credit (equivalent to a grade of F) No unit credit awarded
LI	Incomplete, course work still in progress	Grade unavailable for MLS students
I	Grade unavailable for JD, LLM and SJD students	Incomplete, course work still in progress
IP	In Progress, multiple term course, grade given upon completion	In Progress, multiple term course, grade given upon completion
W	Withdrew from course	Withdrew from course
DR	Deferred Report	Deferred Report

RANK: Until 1970, the School of Law ranked its graduates according to their final, cumulative grade point averages. Since that time, it has been the policy of the School of Law not to rank its student body. The only exceptions are:

- 1971 – 2015 - at the end of each academic year the top 10 students in the second- and third-year classes were ranked.
- 2016 – Present - at the end of each academic year the top 12 students in each class are ranked.
- 2009 – Present - the top ten percent of each LLM graduating class are ranked (by percentile, rather than numerically).
- The top ten percent of each JD graduating class is invited to join the Order of the Coif (a National Honorary Scholastic Society.)

HONORS:

2008 - Present - Masin Scholars – top 12 students at the end of the first year, prior to optional grade changes.

2013 – Present - Masin Gold Award (formerly Dean's Awards) – highest grade in each course graded on a curve. Masin Silver Award (formerly Runner-up Dean's Award) - second highest grade in each large course (40 or more students) graded on a curve.

ACCREDITATION: American Bar Association, 1952

CERTIFICATION: The Seal of the University of California, Los Angeles, Registrar's Office and the Registrar's signature.

FERPA NOTICE: This educational record is subject to the Federal Family Educational Rights and Privacy Act (FERPA) of 1974, and subsequent amendments. This educational record is furnished for official use only and may not be released to, or accessed by, outside agencies or third parties without the written consent of the student identified by this record.

Previous Grading Scales

GRADE	DEFINITION
100-85	A or excellent performance (grades of 95 and above demonstrate extraordinary performance)
84-75	B or good performance
74-65	C or satisfactory performance
64-55	D or unsatisfactory performance
54-50	F or lack of understanding of major aspects of the course No unit credit awarded
P	Pass (Equivalent to grades of 65 and above) Not calculated in the GPA
U = 62	Unsatisfactory (Equivalent to grades of 64-55)
NC = 50	No Credit (Equivalent to grades of 54-50) No unit credit awarded
IP	In Progress, multiple term course, grade given upon completion
W	Withdrew from course

GRADE	DEFINITION
H (high)	A or excellent performance
HP (high pass)	B or good performance
P (pass)	C or satisfactory performance
I (inadequate)	D or unsatisfactory performance
NC (no credit)	F or lack of understanding of major aspects of the course. No unit credit awarded
CR (credit)	Pass, unit credit awarded for the course
NR (in progress)	In progress, multiple term course, grade given upon completion
W	Withdrew from course

UNIVERSITY OF CALIFORNIA, LOS ANGELES

BERKELEY • DAVIS • IRVINE • LOS ANGELES • MERCED • RIVERSIDE • SAN DIEGO • SAN FRANCISCO

CLYDE SPILLENGER
PROFESSOR OF LAW



UCLA

SANTA BARBARA • SANTA CRUZ

SCHOOL OF LAW
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June 2, 2023

Dear Judge:

I am writing this letter in support of the application by **Nathan Siegel**, Class of 2024 at UCLA School of Law, for a clerkship in your chambers beginning Fall of 2024. I am Professor of Law at UCLA, where I have taught since 1992. I recommend Nathan very highly. He will make an excellent lawyer, and he'll be a very proficient law clerk.

Nathan was a student in my upper-level seminar entitled "Topics in American Constitutional History" during Fall 2022. This seminar featured a mix of primary and secondary readings, mostly on topics that are covered lightly if at all in the first-year Constitutional Law class. The emphasis was on close readings and guided discussions, with students required to post online responses to the week's readings on several occasions during the semester. In addition, Nathan chose to write his required Supervised Analytic Writing paper as part of this seminar. His paper, "Women's Suffrage, Black Suffrage, and Lessons for Today" was first-rate. His comparison of the dynamics underlying the movements for Black Suffrage and Women's Suffrage, respectively, was sophisticated and well-informed. His paper achieved what I seek from my legal history students in their research: an understanding of historical issues that illuminates contemporary controversies. In addition, Nathan's online responses to the seminar's weekly readings were excellent. In class, he was pointed and astute in discussion. His interventions were modest and polite in tone, but always nuanced and persuasive.

Nathan is thoughtful, affable, respectful. He's been a pleasure to work with and has struck me as being mature and responsible.

As you can see, I recommend Nathan Siegel enthusiastically. Please let me know if I can be of any further assistance.

Sincerely,

A handwritten signature in black ink that reads "Clyde Spillenger". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Clyde Spillenger
Professor of Law

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Sincerely,

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Clyde Spillenger
Professor of Law



DAVID BABBE
LECTURER IN LAW

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May 31, 2023

Dear Judge:

Re: Recommendation of Nathan Siegel for Judicial Clerkship

I am writing to recommend Nathan Siegel for employment as a judicial clerk. I worked very closely with Nathan as a student in my Pretrial Civil Litigation course. In that course, Nathan drafted a research memo; drafted interrogatories, requests for admissions and requests for production of documents; took fact, corporate designee, and expert depositions; and drafted and argued a motion to compel and argued a motion to dismiss. As a result, I have had the opportunity to carefully observe and evaluate Nathan's research and writing skills, his oral advocacy skills, his work ethic, and his ability to work effectively with his colleagues. Based on these observations, I strongly recommend Nathan for a judicial clerkship.

Although I am currently a teacher at UCLA, I make my comments about Nathan from the perspective of a practicing litigator, not an academic. Before joining UCLA's faculty, I spent twenty-nine years in private practice specializing in complex business litigation, the last twenty years as a partner with Morrison & Foerster. During that time, I worked with dozens of young lawyers, and have developed a strong sense of the qualities in law students and young lawyers that are predictive of success in practice.

Nathan has all the qualities that will make him a very effective judicial clerk. He has very strong research and analytical skills. The research memo and the motion to compel that he drafted consistently reflected thoughtful and insightful factual and legal analysis. Nathan is also a very good writer. His writing is well-organized, logical, clear, and direct. In addition, his work product always demonstrated the highest level of preparation and attention to detail. One of the points that I try to impress upon my students is that preparation is key to being a successful lawyer. Nathan did an outstanding job of preparing for each of his litigation simulations. For example, in each of the depositions that he took, he not only identified all of the information that he needed to get from the deponent, but had carefully thought through what would be the most effective questioning techniques to use to obtain that information. Similarly, in the two motions that he argued, Nathan was not only fully in command of the relevant facts and legal authorities, but did an outstanding job of anticipating the court's questions and presenting his arguments in a very persuasive manner.

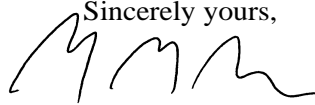
On a personal level, Nathan is a treat to work with. He is a very responsible individual and is mature beyond his years. He takes complete responsibility and ownership of his work, and has a very strong work ethic. He is the kind of person that, when I was in practice, I always wanted to have on my litigation team. If you give Nathan an assignment, you can have absolute confidence that the work product will be excellent, that it will be done on time and that it will exceed your expectations. Nathan is also a genuinely nice person who was well-liked by his fellow students.

May 31, 2023

Page 2

For all these reasons, I believe that Nathan will be an outstanding judicial clerk and a strong addition to your chambers. Please feel free to give me a call or send me an e-mail if I can provide any additional information. You can reach me at (310) 994-6986 or babbe@law.ucla.edu.

Sincerely yours,

A handwritten signature in black ink, consisting of stylized, overlapping loops and curves, representing the name David Babbe.

David Babbe

Nathan Siegel

13541 Chaco Ct. | San Diego, CA 92129 | (858) 863-3039 | siegel2024@lawnet.ucla.edu

Writing Sample

The attached writing sample is a brief submitted for the UCLA Moot Court Fall Competition. The case involved a Fourteenth Amendment Equal Protection issue regarding an affirmative action policy and a First Amendment issue stemming from the termination of a public university lecturer.

The questions presented for the competition were:

- 1) Whether Respondent's admissions policy, which gives preferential weight to male applicants, violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution?
- 2) Whether Respondent violated Petitioner's right to freedom of expression under the First Amendment to the United States Constitution, as applied to the states through the Due Process Clause of the Fourteenth Amendment?

I represented the petitioner, Stephanie Jones. Please note that for the First Amendment question competitors were asked only to address whether *Pickering* balancing should be applied, and not to actually apply it. This memorandum is completely self-edited and constitutes original work product.

Introduction

Stephanie Jones seeks to invalidate the admissions policy (the “Policy”) of Westsylvania State University (“WSU”)’s medical school (WSU Medical). The Policy discriminates based on gender by intentionally accepting men with lower qualifications than women. After her application was rejected under the Policy, Jones began working for WSU undergrad as a lecturer. She was fired from this position for expressing her personal viewpoints about gender-based affirmative action and the Policy. The discriminatory Policy violates the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution, and WSU’s firing of Jones violated her right to freedom of expression under the First Amendment to the U.S. Constitution.

First, the Policy violates the First Amendment because it is not sufficiently narrowly tailored to further a compelling governmental interest as is required of such an inherently suspect classification. Even if this strict scrutiny were not applied, the Policy would still not satisfy the minimum level of scrutiny that has been applied to gender-based discrimination cases.

Second, Jones’s speech was addressed to matters of public concern and was not otherwise barred from First Amendment protection by the *Garcetti* requirement. Though Jones’s speech is not barred from protection by the *Garcetti* requirement, it should not even apply in such cases where the speaker was exercising her academic and scholastic freedom. Because her speech was directed to a matter of public concern, *Pickering* balancing should be applied.

Statement of the Case

WSU is a competitive public university that is the flagship school of the Westsylvania seven-campus state system. (R at 3). Both the university and WSU Medical have competitive admissions processes. (R at 4).

WSU Medical has an unbalanced gender ratio, with more than 60 percent of its students being women. (R at 4). Recently, two thirds of applications received by WSU Medical were from women. (R at 4). Of the 1,300 students admitted, 800 were women. (R at 4). Generally, WSU Medical’s graduating class consists of approximately 55 percent women. (R at 4). Similar trends are seen nationwide in medical schools, but this is a relatively recent development.¹ (R at 4). Today, 49% of medical schools have a majority-female student body. (R at 4).

WSU Medical has long argued that gender diversity is critical to its status and prestige, and its primary concern is that a growing gender disparity will negatively impact its ranking. (R at 4). This is because it believes that: (1) most medical students view a diverse, equitable balance of men and women as crucial to a well-rounded academic experience; and (2) generally, once a school is regarded as “one-sided,” fewer students will find the school to be an attractive option. (R at 4). WSU Medical cannot, however, confirm this speculation with any empirical data. (R at 4). To fix this perceived problem, WSU Medical aims to admit more males than females because males tend to accept offers at a lower rate. (R at 4). WSU Medical also argues that men and women bring different lived experiences and perspectives to the classroom, which enhance the educational experience while helping to break down stereotypes. (R at 5).

Since 2010, WSU Medical’s Admissions Committee has made efforts to ameliorate gender disparities, including: (1) visiting every undergraduate institution within a 250-mile radius at least once every quarter; (2) increasing the school’s recruiting budget by 30 percent to fund email marketing campaigns aimed at male applicants as well as in-person receptions and

¹ In 1985, 31 percent of students enrolled in American medical schools were women. In 1976, that number was only 27 percent, and in 1968, it was 10 percent.

seminars at the Medical School; (3) offering the first 1,000 males who apply to the Medical School fee waivers; (4) hosting male-only application workshops; (5) creating diversity scholarships for admitted male students from underrepresented backgrounds; (6) sending WSU Medical apparel to the first 1,500 male candidates who apply to the Medical School; and (7) expanding outreach by advertising to prospective candidates on Facebook and Instagram using an algorithm intended to target males in their final years as undergraduates. (R at 5). Despite this, a gender gap in GPA and test scores persists, which has led WSU Medical to believe that it should accept more male students, despite their lower credentials. (R at 5). In April, 2018, WSU Medical instituted the Policy to reduce its gender gap. (R at 5).

Stephanie Jones applied to WSU Medical in January 2019 with an MCAT score above the national median and an undergraduate GPA that put her in the top 20 percent of her class. (R at 6). She also had a masters degree and a significant amount of work and volunteer experience. (R at 6). After her application was rejected, she used the Freedom of Information Act to obtain data on the incoming class that showed that many admitted males had GPAs and test scores lower than hers. (R at 6). All admitted females met or exceeded Jones' credentials. (R at 6).

In addition to grades and test scores, WSU Medical considers many other factors in its admissions process. (R at 6). These include its "Plus Factors," which have in recent years given more weight to gender. (R at 7). In 2020, WSU Medical appointed a committee of medical professors that found that WSU Medical's admissions team "presses its thumb on the scale" in favor of males when they have the same credentials as females. (R at 7). It also discovered that, since 2017, WSU Medical set a numerical goal for males to admit. (R at 7).

After Jones was rejected, she began teaching at WSU undergrad as a part-time lecturer. (R at 7). The Gender Studies department created a class on gender and medicine exclusively for

Jones. (R at 8). Jones also taught a large introductory survey class on gender issues. (R at 8). During the Fall 2021 term, Jones frequently called on male students to defend WSU Medical’s affirmative action policy and made jokes such as chiding male students for failing to “buck the affirmative action stereotype.” (R at 8). One students’ complaint about her actions led WSU’s Dean of Diversity, Inclusion, and Equity to demand that she change her behavior. (R at 8).

WSU did not require Jones to publish papers or participate in research, though she attended two conferences (one at WSU) in October 2022. (R at 8-9). Jones presented papers at these conferences that criticized gender-based affirmative action and the Policy. (R at 9).

In November, WSU’s student government hosted an Anti-Racism rally. (R at 10). Jones, at the urging of WSU faculty and student government leaders, performed a slam poetry verse that criticized affirmative action. (R at 10). Her performance went viral, causing WSU to lose a third of its alumni donations (from male alumni). (R at 10). Later that month, WSU fired Jones. (R at 10)

Argument

I. The Policy is Not Sufficiently Narrowly Tailored to Further a Compelling Governmental Interest as is Required of Such an Inherently Suspect Classification

Government programs that create classifications based on immutable characteristics that have “no relation to ability to perform or contribute to society” are inherently suspect. *Frontiero v. Richardson*, 411 U.S. 677, 686 (1973) (Brennan, J., plurality). When the state imposes these classifications, such as those based on gender, its “burden of justification is demanding.” *United States v. Virginia*, 518 U.S. 515, 533 (1996); *see, e.g., Kirchberg v. Feenstra*, 450 U.S. 455, 461 (1981) (finding that “the burden remains on the party seeking to uphold a statute that expressly discriminates on the basis of sex to advance an exceedingly persuasive justification for the challenged classification”) (internal quotations omitted).

A. Strict Scrutiny Should be Applied to WSU Medical’s Discriminatory Gender-Based Admissions Policy

As set forth by Justice Brennan in *Frontiero*, there is “implicit support” for the determination that gender classifications are “inherently suspect and must therefore be subjected to close judicial scrutiny.” 411 U.S. at 682 (plurality). Strict scrutiny is thus the correct test for gender discrimination because “statutory distinctions between the sexes often have the effect of invidiously relegating the entire class of females to inferior legal status without regard to the actual capabilities of its individual members.” *Id.* at 686-7. As was determined in *Frontiero*, sex “is an immutable characteristic determined solely by the accident of birth” that “frequently bears no relation to ability to perform or contribute to society.” *Id.* The Policy is one such example of gender having no relation to ability to perform. There is no suggestion that it is intended to artificially reduce the percentage of women in WSU Medical’s class because of their inability to perform in the medical field. In fact, if anything, the Policy is reducing how qualified the average student is by admitting less qualified mail applicants because of their gender.

Though Justice Brennan’s opinion in *Frontiero* was only a plurality opinion, Justice Powell and the two other justices signing onto his opinion concurred in the judgment and only refrained from signing onto Justice Brennan’s opinion because they felt it was “unnecessary for the Court in [that] case to characterize sex as a suspect classification.” 411 U.S. at 691-2 (Powell, J., concurring). They did not foreclose the possibility of gender being considered a suspect classification in the future. They further justified their unwillingness to apply strict scrutiny by pointing out that the Equal Rights Amendment had at the time just been submitted for ratification by the states. *Id.* at 692. They were waiting for the will of the people to be asserted and did not want the Court to step in “prematurely and unnecessarily” to “assume a decisional

responsibility” when the democratic process was debating the proposed Amendment. *Id.* The present case differs importantly in that the Equal Rights Amendment has now been awaiting ratification for almost fifty years. This is certainly more than enough time for the democratic process to have played out such that it is appropriate for the Court to now step in to hold gender to be a suspect classification.

Furthermore, the correct test for affirmative action cases is strict scrutiny, as established by Justice Powell’s plurality opinion in *Bakke* and affirmed in *Grutter*. *Regents of the Univ. of California v. Bakke*, 438 U.S. 265, 289-90 (1978) (“The guarantee of equal protection cannot mean one thing when applied to one individual and something else when applied to a person of color. If both are not accorded the same protection, then it is not equal.”); *Grutter v. Bollinger*, 539 U.S. 306, 323 (2003). The same reasoning can be applied to gender. If the guarantee of equal protection means one thing when applied to an individual and something else when applied to a person of a different gender, then it is not equal. In this affirmative action case, as was the case in *Grutter*, strict scrutiny should be applied.

B. WSU Medical Has Failed to Show that Gender Diversity is a Compelling State Interest

When strict scrutiny is applied, the party defending a discriminatory policy based on a suspect classification bears the burden of showing that the policy furthers a compelling governmental interest. *See, e.g., id.* at 326 (holding that classifications reviewed under strict scrutiny are constitutional only if they “further compelling governmental interests”). In *Grutter*, the Court found that diversity was a compelling interest in the university affirmative action context, but it focused only on diversity of race, not gender. *Id.* at 328; *see also Fisher v. Univ. of Texas at Austin II*, 579 U.S. 365, 381 (2016) (holding that “a university may institute a race-conscious admissions program as a means of obtaining the educational benefits that flow from

student body diversity”). Because the Court has not explicitly identified gender diversity in university admissions as a compelling interest, the facts of the present case must show that gender diversity was being sought as the basis for a compelling governmental interest.

In *Grutter*, the Court justified its finding that the law school in that case had a compelling interest in attaining a diverse student body by deferring to the school’s judgment that “diversity will, in fact, yield educational benefits.” *Grutter*, 539 U.S. at 328. WSU Medical’s primary concern, however, is that a growing gender disparity will negatively impact its ranking. (R at 4) Though it is understandable that a school would be concerned about this loss of prestige, this is not the compelling interest of yielding educational benefits that the Court has used to support racial diversity in affirmative action cases. Furthermore, WSU Medical has no empirical data to support its concerns. (R at 4). Though WSU also argues that men and women bring different lived experiences and perspectives to the classroom, and thus combine to enhance the educational experience, it again lacks the evidence and findings regarding this secondary concern necessary to show that gender diversity in this case is a sufficiently compelling interest. (R at 5).

Furthermore, there is also no compelling interest here in using gender diversity as a basis to rectify past discrimination. Though WSU Medical has more female than male students and 54.5 percent of the total number of medical students across the nation were women in 2019, the percentage of women enrolled in American medical schools has historically been well below 50 percent. (R at 4). Furthermore, a slight majority of medical schools across the country have majority-male student bodies. (R at 4). Thus, if there is in fact any historical gender disparity that requires correction by affirmative action, it is that of women being underrepresented, not men. WSU thus has not compelling state interest that the Policy is meant to further.

C. The Policy is not Sufficiently Narrowly Tailored to Achieve WSU Medical's Interest of Gender Diversity

Even if there is a compelling state interest to justify a discriminatory admissions policy, the policy must be necessary to further the interest and must be narrowly tailored to achieve it. *Bakke*, 438 U.S. at 306 (finding that the use of a suspect classification must be “necessary...to the accomplishment of its purpose of the safeguarding of its interest”). “Quota systems” are not allowed. *Grutter*, 539 U.S. at 328.

The Policy makes use of a quota, as understood by the Court, as part of the admissions process. Though WSU Medical makes use of various criteria, such as its “Plus Factors,” a committee appointed by WSU Medical found that between 2017 and 2020 the school set a “numerical goal” for males to admit. (R at 7). Though not a quota by name, the Court has found a “goal” to be equally guilty of impermissible line-drawing based on gender. *Bakke*, 438 U.S. at 289 (“Whether this limitation is described as a quota or goal, it is a line drawn on the basis of race and ethnic status”).

Narrow tailoring also requires “serious, good faith consideration” of workable nondiscriminatory “alternatives that will achieve the diversity the university seeks.” *Grutter*, 539 U.S. at 339. Though WSU Medical’s Admissions Committee had previously devoted time and resources to ameliorating gender disparities, there are still other nondiscriminatory ways that the school could have tried to attract more male students such as advertising in male-dominated media markets or reaching out to alumni. Furthermore, because male applicants who are accepted to WSU Medical enroll at a lower rate than women, WSU has not shown how the Policy will increase diversity. Without addressing why the average male is less likely to enroll, WSU cannot know if accepting more (less qualified) males will increase enrollment.

Even if it were determined that strict scrutiny should not apply to a gender-based admissions policy, the Policy is still unconstitutional. Regarding gender-based classifications, the Court has required at least that “the discriminatory means employed are substantially related to the achievement” of the governmental interest. *United States v. Virginia*, 518 U.S. at 533. The above-described failure of WSU Medical to show how its accepting less-qualified male applicants will improve diversity when it is unknown why males enroll at a lower rate renders the Policy not “substantially related” to its interest in improving gender diversity.

II. Jones’ Speech Was Addressed to Matters of Public Concern and Was Not Otherwise Barred from First Amendment Protection by the *Garcetti* Requirement

Public employees, including teachers, enjoy a measure of First Amendment protection from termination due to their speech. *Pickering v. Board of Ed.*, 391 U.S. 563, 568 (1968) (holding that it “has been unequivocally rejected in numerous prior decisions of this Court” that “teachers may constitutionally be compelled to relinquish their First Amendment rights they would otherwise enjoy as citizens to comment on matters of public interest in connection with the operation of the public schools in which they work”). Such employee speech is protected if it does not occur “pursuant to” their “official duties,” *Garcetti v. Ceballos*, 547 U.S. 410, 413 (2006), and it relates to matters of “public concern.” *Pickering*, 391 U.S. at 568.

A. The *Garcetti* Requirement that Speech Not Occur “Pursuant to” an Employee’s “Official Duties” Does Not Apply to Jones’ Speech Because It Was Made Pursuant to Her Scholarship and Exercise of Academic Freedom

Though *Garcetti* set forth a general rule regarding government employees’ speech, it expressly declined to address whether its analysis would apply “to a case involving speech related to scholarship or teaching.” *Garcetti*, 547 U.S. at 425. Furthermore, this Court has previously held that “the First Amendment protects the free-speech rights of professors when they are teaching.” *Meriwether v. Hartop*, 992 F. 3d 492, 505 (6th Cir. 2021). Several Circuit

Courts have persuasively reasoned that *Garcetti* does not apply to professors at public universities “at least when engaged in core academic functions, such as teaching and scholarship.” *Id.*; *see, e.g., Demers v. Austin*, 746 F. 3d 402, 412 (9th Cir. 2014) (“We conclude that *Garcetti* does not – indeed, consistent with the First Amendment, cannot – apply to teaching and academic writing that are performed pursuant to the official duties of a teacher and professor”); *Adams v. Trs. Of the Univ. of N.C. Wilmington*, 640 F. 3d 550 (4th Cir. 2011) (“Applying *Garcetti* to the academic work of a public university faculty member...could place beyond the reach of First Amendment protection many forms of public speech...a professor engaged in during his employment. That does not appear to be what *Garcetti* intended...”).

To protect the academic freedom and scholarship that the courts have found to demand First Amendment protection, the *Garcetti* requirement must not be applied to Jones’ speech directed to students in the classes that she taught. The same is true for her academic writing and the speeches she gave in October 2022, which fall under her academic scholarship. Because Jones was encouraged to deliver her slam poetry verse at the Anti-Racism rally by WSU faculty and student government leaders, and her topic was related to her scholarship and the subjects of the classes she taught, this speech should avoid the *Garcetti* requirement as well.

B. Even if the *Garcetti* Requirement Applies Here, the Speech for Which Jones was Disciplined Did Not Occur “Pursuant to” Her “Official Duties”

When *Garcetti* applies, it requires that “public employees [not] make statements pursuant to their official duties.” *Garcetti*, 547 U.S. at 421. This is because “[w]hen a public employee speaks pursuant to employment responsibilities, ...there is no relevant analogue to speech by citizens who are not government employees.” *Id.* at 424.

Jones was fired shortly after she criticized WSU’s gender-based affirmative action policies at two academic conferences and her performance at the Anti-Racism rally went “viral”

on social media. (R at 9-10). Though she was encouraged to perform at the Anti-Racism rally by WSU faculty and student government leaders, her performance was not in any way part of her required official duties. This is further supported by the fact that WSU's student government president did not introduce Jones as an employee of WSU. (R at 10). This was an entirely voluntary performance where she shared her personal scholarly viewpoints. Though Jones availed herself of travel support and stipends from WSU to cover research costs, neither this research, nor her subsequent attendance of two academic conferences, were part of her required duties as a lecturer at WSU. (R at 8-9). To the contrary, she was hired to teach undergraduate courses, and a new class was even created exclusively for her. (R at 8). Furthermore, because the Anti-Racism rally featured non-WSU speakers and the conferences were attended by people outside of WSU, Jones' speech had a relevant private citizen analogue because she voiced her "grievance through channels available to citizens generally." *Weintraub v. Bd. Of Educ.*, 593 F.3d 196, 204 (2nd Cir. 2010).

Though her speech as part of teaching her was pursuant to her official duties, this was not the speech for which she was fired. Because the speech for which she was disciplined was not pursuant to her official employment duties, Jones' speech survives the *Garcetti* requirement.

C. Jones' Speech Addressed Matters of Public Concern

"[A] teacher's exercise of [her] right to speak on issues of public importance may not furnish the basis for [her] dismissal from public employment." *Pickering*, 391 U.S. at 574. "Whether an employee's speech addresses a matter of public concern must be determined by the content, form, and context of a given statement, as revealed by the whole record." *Connick v. Myers*, 461 U.S. 138, 147-48.

In *Connick*, a District Attorney informed an Assistant District Attorney that she was being fired for refusing to accept a transfer, but the “facts showed that the questionnaire was the real reason for her termination.” *Id.* at 142. Similarly, though WSU expressed their unhappiness with several of Jones’ actions, she was only fired after her performance at the Anti-Racism rally went viral and the university lost around a third of its alumni donation. (R at 10). Therefore, it is this speech that needs to be addressed to see if it involves issues of public concern.

Jones’ poem at the rally addressed affirmative action and gender bias against women, which are some of the most polarizing issues in this country, and just as concerning to the public as statements about presidential policies and the attempted assassination of the president. *See Rankin v. McPherson*, 483 U.S. 378, 386 (1987). When a public university uses a discriminatory policy to judge the applications of members of the public, this is a public issue. This also applies to Jones’ speech at the two academic conferences she attended, as they involved the same subject matter being shared with employees of other public institutions and professional organizations. (R at 9). Because Jones’ speech involved issues of public concern, *Pickering* balancing should be applied to determine whether the speech is constitutionally protected.

Conclusion

For the foregoing reasons, this Court should reverse the judgment of the Court of Appeals and hold that WSU Medical’s Policy is a violation of the Equal Protection Clause of the Fourteenth Amendment, and that Jones’ speech is protected under the First Amendment, pending *Pickering* balancing.

Respectfully Submitted,
Attorney for Petitioner

Applicant Details

First Name **Sarah**
 Middle Initial **I**
 Last Name **Siegel**
 Citizenship Status **U. S. Citizen**
 Email Address sarah.i.siegel@gmail.com

Address

Address
Street
50 Causeway Street #3102
City
Boston
State/Territory
Massachusetts
Zip
02114
Country
United States

Contact Phone Number **6032770855**

Applicant Education

BA/BS From **Yale University**
 Date of BA/BS **May 2019**
 JD/LLB From **The University of Michigan Law School**
<http://www.law.umich.edu/currentstudents/careerservices>
 Date of JD/LLB **May 6, 2022**
 Class Rank **School does not rank**
 Law Review/Journal **Yes**
 Journal(s) **Michigan Law Review**
 Moot Court Experience **No**

Bar Admission

Admission(s) **Massachusetts**

Prior Judicial Experience

Judicial Internships/ Externships	No
Post-graduate Judicial Law Clerk	Yes

Specialized Work Experience

Recommenders

Hines, James
jrhines@umich.edu
734-936-5669
Reimann, Mathias
purzel@umich.edu
734-763-6331
Ferrera, Vinita
vinita.ferrera@wilmerhale.com

This applicant has certified that all data entered in this profile and any application documents are true and correct.

Sarah Siegel

50 Causeway Street #3102, Boston, MA 02114
603-277-0855 • sarah.i.siegel@gmail.com

March 26, 2023

The Honorable Jamar K. Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510

Dear Judge Walker:

I am a first-year Litigation Associate at WilmerHale, having previously earned my law degree at the University of Michigan Law School and my undergraduate degrees in History and Molecular, Cellular, and Developmental Biology from Yale University. I am writing to apply for a clerkship in your chambers for the 2024-2025 term.

After serving as a Summer Associate at WilmerHale in 2021, I joined the Boston office full-time in August 2022. I am focused on honing my litigation skills during the next two years with mentoring by a terrific team of partners and senior associates. I also developed my legal research and writing skills as an intern in the Criminal Division of the United States Attorney's Office for the Western District of Michigan in the summer of 2020. Additionally, at Michigan Law, I was a Senior Editor of the *Michigan Law Review*, where I strengthened my writing, cite-checking, and editing skills.

In addition to my aptitude and enthusiasm for the law, I have a strong work ethic, a collaborative and positive attitude, a friendly nature, and a good sense of humor. I am eager to apply my skills to a clerkship, and I would be honored to have the opportunity to clerk for you in Norfolk.

I have attached my resume, my writing sample, and my law school transcript for your consideration. Letters of recommendation from the following individuals are also attached:

- James R. Hines Jr. (Michigan Law Professor): jrhines@umich.edu, 734-936-5669
- Mathias W. Reimann (Michigan Law Professor): purzel@umich.edu, 734-763-6331
- Vinita Ferrera (WilmerHale Partner): vinita.ferrera@wilmerhale.com, 617-526-6208

Additionally, the following individuals have offered to serve as references:

- Albert Choi (Michigan Law Professor): alchoi@umich.edu, 434-825-3430
- Jeannette P. Leopold (WilmerHale Senior Associate): jeannette.leopold@wilmerhale.com, 617-526-6109
- Justin M. Presant (Assistant US Attorney): Justin.Presant@usdoj.gov, 616-808-2184 (work) and 616-901-7691 (work cell)
- Stephanie Waite (Former Supervisor at the Yale Office of Career Strategy): stephaniejeanlauwwaite@gmail.com, 850-459-3388 (cell)

Thank you for your time and consideration.

Respectfully,
Sarah Siegel

Sarah Siegel

50 Causeway Street #3102, Boston, MA 02114
603-277-0855 • sarah.i.siegel@gmail.com

EDUCATION

UNIVERSITY OF MICHIGAN LAW SCHOOL, Ann Arbor, MI

J.D., May 2022

GPA 3.68

Journal: *Michigan Law Review*, Senior Editor.

Honors: Dean's Scholarship; Certificate of Pro Bono Service; Spirit of *Michigan Law Review* Award.

Activities: Wolverine Street Law, *Co-President*; Women Law Students Association, *Treasurer*; MLaw Eviction Defense Team, *Volunteer*; Campus Philharmonia Orchestra, *Trombonist*.

YALE UNIVERSITY, New Haven, CT

B.A. in History, *with honors*; and **B.A. in Molecular, Cellular, and Developmental Biology**, May 2019

GPA 3.58

Honors: Film Department Citation; Math Department Citations; Yale Hunger & Homelessness Action Project Unsung Hero Award; Y Work Award.

Fellowships: Yale Women in Government Fellowship; Yale Inst. for Social & Policy Studies Director's Fellowship; Michael N. Levy '85 Fund for Political Internships; Trumbull College Mellon Research Grant.

Activities: Yale Volunteer Income Tax Assistance, *Co-President and Advanced Preparer*; Trumbull College, *Office Aide*; Yale Harvest pre-orientation Leader; trombonist in student productions.

Theses: "‘Women Are Very Essential Sometimes’: How the United States Navy Recruited Women for the Duration of World War II" (History Senior Thesis); "A Review of Landmark Research in Bacterial Chemotaxis" (Molecular, Cellular, and Developmental Biology Senior Thesis).

EXPERIENCE

WILMERHALE, Boston, MA

Litigation Associate, August 2022 – present

Summer Associate, May – July 2021

- Practice with firm's intellectual property litigation group, assisting with all stages of complex lawsuits.
- Maintain an active pro bono practice, focusing on reproductive rights and immigration.
- As a Summer Associate, researched and drafted memos on issues relating to trademarks, federal preemption, tax, jurisdiction, and contracts. Also compiled and wrote a twice-weekly newsletter updating nearly 200 firm members on recent developments in the anti-discrimination field.

UNITED STATES ATTORNEY'S OFFICE, WESTERN DISTRICT OF MICHIGAN, Grand Rapids, MI

Legal Intern, June – August 2020

- Drafted briefs for the district court and court of appeals on motion to suppress and probation modification issues.
- Researched cases on evidentiary, trial, and sentencing matters and synthesized findings for use by attorneys.
- Analyzed legislative history of statutes to help with a sentencing research project.

FRIENDS OF GINA RAIMONDO, Providence, RI

Intern, June – August 2018

- Communicated with constituents to advocate for the Governor's policies on this successful campaign.
- Utilized campaign software to identify key constituents and create targeted directories for canvassing.
- Selected for reelection campaign staff after policy internship in the Governor's Office in the Summer of 2016.

ADDITIONAL

Citizenship: United States of America, Republic of Ireland

Languages: Spanish (proficient)

Interests: Listening to classical music, playing trombone, and hiking



Transcripts, Certification and Diploma Department

LSA Building, Suite 5000
500 S. State Street
Ann Arbor, MI 48109-1382
Phone: 734-763-9066 Fax: 734-764-5556
ro.umich.edu

University of Michigan Statement of Authenticity

Transcript of: Sarah Iris Siegel

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Page 1

The University of Michigan Law School

Cumulative Grade Report and Academic Record



Name: Siegel, Sarah Iris

Student#: 71955952

Sarah Siegel
University Registrar

Subject	Course Number	Course Title	Instructor	Hours	Load	Graded	Credit Towards	Program	Grade
Fall 2019 (September 03, 2019 To December 20, 2019)									
LAW	510	003 Civil Procedure	Nicholas Bagley	4.00	4.00	4.00	4.00	4.00	B
LAW	530	004 Criminal Law	David Uhlmann	4.00	4.00	4.00	4.00	4.00	A-
LAW	580	004 Torts	Margo Schlanger	4.00	4.00	4.00	4.00	4.00	B+
LAW	593	016 Legal Practice Skills I	Mark Osbeck	2.00	2.00	2.00	2.00	2.00	S
LAW	598	016 Legal Pract: Writing & Analysis	Mark Osbeck	1.00	1.00	1.00	1.00	1.00	S
Term Total			GPA: 3.333	15.00		12.00		15.00	
Cumulative Total			GPA: 3.333	12.00		12.00		15.00	

Winter 2020 (January 15, 2020 To May 07, 2020)
During this term, a global pandemic required significant changes to course delivery. All courses used mandatory Pass/Fail grading. Consequently, honors were not awarded for 1L Legal Practice.

LAW	520	001 Contracts	Albert Choi	4.00	4.00	4.00	4.00	4.00	PS
LAW	540	005 Introduction to Constitutional Law	Julian Davis Mortenson	4.00	4.00	4.00	4.00	4.00	PS
LAW	594	016 Legal Practice Skills II	Mark Osbeck	2.00	2.00	2.00	2.00	2.00	PS
LAW	622	001 Editing and Advocacy	Patrick Barry	1.00	1.00	1.00	1.00	1.00	PS
LAW	792	001 Sports Law	Timothy Pinto	3.00	3.00	3.00	3.00	3.00	PS
Term Total				14.00		14.00		14.00	
Cumulative Total			GPA: 3.333	12.00		12.00		29.00	

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Page 2

The University of Michigan Law School

Cumulative Grade Report and Academic Record

Name: Siegel, Sarah Iris
 Student#: 71955952
 University Registrar

Subject	Course Number	Section Number	Course Title	Instructor	Load	Graded Hours	Grade
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Fall 2020 DE MICHIG (August 31, 2020 To December 14, 2020)

LAW	641	MIC 001	Crim Just: Invest&Police Prac	Eve Primus	4.00	4.00	F
LAW	686	NIVE 001	Federal Indian Law	Matthew Fletcher	3.00	3.00	F
LAW	747	001	Taxation of Individual Income	James Hines Jr	4.00	4.00	F
LAW	900	411	Research	Roscanna Sommers	3.00	3.00	F
Term Total					14.00	11.00	14.00
Cumulative Total						23.00	43.00

Winter 2021 (January 19, 2021 To May 06, 2021)

LAW	606	NIVE 801	Transnational Law	Mathias Reimann	3.00	3.00	F
LAW	643	001	Crim Procedure: Bail to Post Conviction Review	Barbara Mcquade	3.00	3.00	B+
LAW	657	001	Enterprise Organization	Albert Choi	4.00	4.00	A-
LAW	751	001	Accounting for Lawyers	James Desimpelare	3.00	3.00	B+
Term Total					13.00	13.00	13.00
Cumulative Total						36.00	56.00

Fall 2021 IGHAN (August 30, 2021 To December 17, 2021)

LAW	469	001	Reproductive Rights & Justice	Leah Litman	2.00	2.00	F
LAW	687	001	Immigration and Nationality	David Thronson	3.00	3.00	F
LAW	693	001	Jurisdiction and Choice Of Law	Mathias Reimann	4.00	4.00	A-
LAW	719	001	Good with Words	Patrick Barry	1.00	1.00	S
Term Total					15.00	14.00	15.00
Cumulative Total						50.00	71.00

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Course Number	Section Number	Course Title	Instructor	Load	Graded Hours	Program Grade	Credit Towards
Winter 2022							
LAW 577	001	Intellectual Property Survey	Nicholson Price	4.00	4.00	F	4.00
LAW 669	001	Evidence	Sherman Clark	3.00	3.00	C	3.00
LAW 755	001	Trusts and Estates I	James Hines Jr	3.00	3.00	U	3.00
LAW 878	001	State Supreme Court Practice	Bridget McCormack	2.00	2.00	A	2.00
SPANISH 277	020	Sp Grammar & Comp	Isabel Larrotiz	3.00	3.00	A+	3.00
Term Total				15.00	12.00	U	15.00
Cumulative Total					62.00	U	86.00
GPA: 3.825							
GPA: 3.675							
End of Transcript							
Total Number of Pages 3							

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University of Michigan Law School Grading System

Honor Points or Definitions

Through Winter Term 1993	Beginning Summer Term 1993
A+ 4.5	A+ 4.3
A 4.0	A 4.0
B+ 3.5	A- 3.7
B 3.0	B+ 3.3
C+ 2.5	B 3.0
C 2.0	B- 2.7
D+ 1.5	C+ 2.3
D 1.0	C 2.0
E 0	C- 1.7
	D+ 1.3
	D 1.0
	E 0

Other Grades:

F Fail.
H Top 15% of students in the Legal Practice courses for students who matriculated from Spring/Summer 1996 through Fall 2003. Top 20% of students in the Legal Practice courses for students who matriculated in Spring/Summer 2004 and thereafter. For students who matriculated from Spring/Summer 2005 through Fall 2015, "H" is not an option for LAW 592 Legal Practice Skills.

I Incomplete.
P Pass when student has elected the limited grade option.*
PS Pass.
S Pass when course is required to be graded on a limited grade basis or, beginning Summer 1993, when a student chooses to take a non-law course on a limited grade basis.* For SJD students who matriculated in Fall 2016 and thereafter, "S" represents satisfactory progress in the SJD program. (Grades not assigned for LAW 970 SJD Research prior to Fall 2016.)

T Mandatory pass when student is transferring to U of M Law School.

W Withdrew from course.

Y Final grade has not been assigned.

* A student who earns a grade equivalent to C or better is given a P or S, except that in clinical courses beginning in the Fall Term 1993 a student must earn a grade equivalent to a C+ or better to be given the S.

MACL Program: HP (High Pass), PS (Pass), LP (Low Pass), F (Fail)

Non-Law Courses: Grades for these courses are not factored into the grade point average of law students. Most programs have customary grades such as A, A-, B+, etc. The School of Business Administration, however, uses the following guides: EX (Excellent), GiD (Good), PS (Pass), LP (Low Pass) and F (Fail).

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The work reported on the reverse side of this transcript reflects work undertaken for credit as a University of Michigan law student. If the student attended other schools or colleges at the University of Michigan, a separate transcript may be requested from the University of Michigan, Office of the Registrar, Ann Arbor, Michigan 48109-1382.

Any questions concerning this transcript should be addressed to:

Office of Student Records
 University of Michigan Law School
 625 South State Street
 Ann Arbor, Michigan 48109-1215
 (734) 763-6499

University of Michigan Law School
625 S. State Street
Ann Arbor, MI 48109

James R. Hines Jr.
L. Hart Wright Collegiate Professor of Law
Richard A. Musgrave Collegiate Professor of Economics,
College of Literature, Science & the Arts
jrhines@umich.edu

March 26, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I write concerning Sarah Siegel, an outstanding 2022 Michigan Law graduate who is now an associate at WilmerHale and is looking for a clerkship.

Sarah will make a fantastic clerk. She is brilliant, careful, and extremely thorough. She is a very hard worker with a delightful personality.

Sarah was my student in two classes, the first time in Law 747 ("Taxation of Individual Income") in the fall of her 2L year. Due to the pandemic the class was entirely online, but despite the remoteness of the learning environment she was fully engaged with the class material right from the start, and never let up. Sarah asked great questions in and out of class, identifying logical inconsistencies in the Internal Revenue Code and regulations, relentlessly (and in many cases, quixotically) seeking to resolve them in satisfying ways. And she had extremely well informed and thoughtful answers whenever cold-called.

Sarah wrote a brilliant final exam. Under Michigan's rules for the pandemic semesters, I am not permitted to compare Sarah's performance to the performances of her classmates that term – but can offer that I have taught this class many times in the past, and Sarah's final exam would have placed her first in the class most of those years.

Subsequently I had Sarah in my Trusts and Estates I class, this time in person, and this time in her last semester of law school. She picked up exactly where she was with the tax class – extremely well prepared and just very impressive. When I needed to call on someone who would be sure to be paying attention and who would know the right answer, I called on Sarah – and she never failed to deliver. Her final exam was (predictably) a tour de force, most notably exhibiting a keen understanding of complex legal issues involving trusts. It is noteworthy that not only was Sarah at the top of this class, but that she turned in a brilliant performance despite this being her last semester in law school, when frankly many students are starting to pack it in – but not Sarah, because that is not how she does things.

The experience of having Sarah in class is that she is as much a colleague as she is a student. She is bright and alert and has a winning personality that combines warm personal interaction with dead seriousness when it is time to talk business. I urge you to take a very close look at Sarah Siegel, as she was an outstanding law student who will make the judge who hires her extremely happy.

Most Sincerely,

James R. Hines Jr.

James Hines - jrhines@umich.edu - 734-936-5669

THE UNIVERSITY OF MICHIGAN
LAW SCHOOL
HUTCHINS HALL
ANN ARBOR, MICHIGAN 48109-1215

Prof. Dr. Mathias Reimann, LL.M.
Hessel E. Yntema Professor of Law

March 26, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

Ms. Sarah Siegel is applying for a clerkship, and I am glad to write in her support. Ms. Siegel was my student twice, and I came to appreciate her as both a highly capable young lawyer and a refreshingly upbeat person. She is smart in an unobtrusive fashion, inquisitive, organized, and disciplined, and she has the precious ability never to lose sight of the forest before the trees.

Let me first say a few words about her performance in my classes. Ms. Siegel took my course on Jurisdiction and Choice of Law (fall of 2021) which has the well-deserved reputation of being one of the toughest challenges in our curriculum. It is a furiously fast-paced, wide-ranging tour de force through both personal and federal jurisdiction (in far greater depth than in any first-year civil procedure course); the law applicable in (transboundary) state court litigation as well in federal courts (including the whole panoply of Erie issues, preemption, federal common law, and substance v. procedure problems); and judgments recognition in both state and federal courts; to all this, often highly complex, material, an international perspective is added. The course thus provides the students with much of the toolkit a judicial clerk must have at his or her fingertips. The final exam is a combination of an objective (in-class) part testing actual knowledge and a 24-hour take-home testing the ability to analyze a complicated case hypothetical, and it leaves no place to hide. It is fair to say that a student who does well in this course shows great promise as a lawyer. It requires strong analytical skills, careful organization of preparation, and constantly keeping abreast with the progress of the class. Ms. Siegel's grade put her in the top 20 % of a very competitive group which consists of many students aiming at federal clerkships.

In a similar vein, scoring a straight A in my Transnational Law course (winter term 2021) is no small feat. The course introduces students to the legal orders that lie beyond the domestic orbit, and the material is as complex as it is novel – students have to deal with treaties and UN Resolutions, decisions by international and foreign tribunals, so-called “soft law” and concepts like sovereign immunity and comity. In this sea of unfamiliar sources, it is difficult to keep one's head above water and even more difficult to make sense of it all. Ms. Siegel's performance demonstrated a strong ability to conquer new territory, get oriented quickly, and learn and apply forms of legal reasoning outside of the standard curricular fare.

Ms. Siegel's overall GPA is nothing to be ashamed of but it does not really reflect her capability. She was a member of the class which got thrown for a loop by the Covid pandemic: remote instruction (via Zoom); mandatory pass-fail grades; no real classroom experience for two or three semesters, etc. Once the dust settled, Ms. Siegel hit her stride and scored top grades in all of her classes. Thus, her last term was her best with all As (including A- and A+). Note that these were hard-core law courses graded on a curve. Note also that she excelled in the course on State Supreme Court Practice which was taught by my former colleague and now Chief Justice of the Michigan Supreme Court, Bridget McCormack – a woman who, I can assure you, has no tolerance for mediocre lawyering and who does not award an A without very good reason.

Then there are Ms. Siegel's numerous extracurricular activities (both at Yale and at Michigan), some showing particular social engagement, some of a more academic nature like her work on the Michigan Law Review. This is a woman of almost boundless energy, curiosity, and enthusiasm.

Finally, her incredibly upbeat personality deserves mention. Once I cold-called on her, whereupon she calmly informed me that she did not have her notes with her (they had fallen out of her backpack in her locker) – and then proceeded to answer my questions (correctly) from memory and to stand her ground under fire completely unfazed and with a smile. Ms. Siegel combines self-confidence with humility and seriousness of purpose with a delightful sense of humor.

It is no surprise that a law firm like Wilmer Hale looked her over for a summer after her second year and then hired her after graduation. Yet, while she is currently practicing law at very high level, her ultimate career goal is in public service.

For this reason also, she is eager to develop more and broader professional skills, especially through high-level mentoring. Already in law school, she was always eager to learn beyond the classroom. I remember that she was among the students who often stayed after class, who sought both my input with regard to the material and my advice with regard to her career options. Thus, a federal clerkship will be an invaluable experience for her.

Mathias Reimann - purzel@umich.edu - 734-763-6331

In short, there is every reason to believe that she will be wonderful person to work with, both on the professional and the personal level. Of course, competition for federal clerkships is stiff, but Ms. Siegel should be considered among the top candidates.

Best regards,

Mathias Reimann

Hessel E. Yntema Professor of Law

Mathias Reimann - purzel@umich.edu - 734-763-6331

March 26, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

Ms. Sarah Siegel has asked me whether I would recommend her for a position as a law clerk in your Chambers. I am happy to do so without reservation.

Sarah worked as a Summer Associate in WilmerHale's Boston office from May through July 2021. She rejoined the firm in August 2022 as an Associate.

Sarah has received uniformly strong reviews during her time at WilmerHale. Her reviewers praise her research abilities, writing and oral communication skills, and her organizational abilities. One colleague wrote that she "tackled a difficult legal research question involving a Russian doll of thorny issues," that she "distilled the issues well," and "presented her findings in a clear and confident manner." Another colleague (himself a former federal court of appeals clerk) noted that Sarah is proactive about checking in to make sure that she is on track both in terms of the substance as well as the form of the requested work product, and he added that she shows good judgment in prioritizing tasks and adjusting as circumstances evolve. Other colleagues have confirmed that Sarah is an effective communicator. She is highly diligent, jumps at opportunities to make meaningful contributions to the matters on which she is working, and is enthusiastic about taking on more responsibility on her cases. She is an excellent team player, a natural leader, and very collegial and enjoyable to work with.

My direct experience with Sarah confirms my colleagues' assessments. I have supervised Sarah's work in connection with a pro bono asylum matter. Sarah has largely driven the matter, including interacting with the pro bono client, working with co-counsel to coordinate strategy, researching and developing the legal arguments, and conducting interviews of both the client and third parties to obtain the necessary factual support for the declarations in support of the asylum application. Sarah has navigated the client communications effectively, in spite of a language barrier. Her written work product has likewise been clear, concise, and persuasive.

Based on what I have seen personally and on my colleagues' evaluations, I believe that Sarah has the work ethic, self-direction, judgment, and attention to detail that will make her an excellent young lawyer. While I would be sorry to see Sarah depart WilmerHale, I recommend her enthusiastically for a position in your Chambers.

Please do not hesitate to contact me if I can provide any further information in this regard.

Yours sincerely,

Vinita Ferrera

Vinita Ferrera - vinita.ferrera@wilmerhale.com

Sarah Siegel

50 Causeway Street #3102, Boston, MA 02114
603-277-0855 • sarah.i.siegel@gmail.com

This writing sample is taken from a partial concurrence and partial dissent that I wrote in the spring of 2022 as part of my State Supreme Court Practice class at Michigan Law with (now former) Chief Justice Bridget McCormack of the Michigan Supreme Court. Each week, we focused on a different case argued or scheduled for argument before the Michigan Supreme Court that term. This writing sample is entirely my own work.

STATE OF MICHIGAN
SUPREME COURT

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

No. 162221

HAMIN LORENZO DIXON,

Defendant-Appellant.

SIEGEL, J. (*concurring in part and dissenting in part*).

Today, this Court answers two questions: (1) whether attempted violation of MCL 800.283a necessarily requires a score of 25 points for Offense Variable (OV) 19; and if not, (2) whether there is sufficient evidence to score OV 19 at 25 points on this record.

On the first question, I concur with the majority's conclusion that attempted violation of MCL 800.283a does not necessarily require a score of 25 points for OV 19, and that only offense and post-offense conduct that creates a significant likelihood of harm to the security of the penal institution necessitates a score of 25 points for OV 19. I write separately regarding the first question because I disagree with the majority's decision to interpret MCL 777.49 (which provides for the scoring of OV 19) as a whole, rather than to focus its analysis only on MCL 800.283a. I would not extend our holding to MCL 777.49 in its entirety.

On the second question, I respectfully dissent from the majority's conclusion that there could be sufficient evidence to score OV 19 at 25 points on this record, and I detail the reasons why I believe that there is insufficient evidence to score OV 19 at 25 points on this record. Thus,

I disagree with the majority's decision to remand to the trial court with the potential for the trial court to score OV 19 at 25 points on this record. I would remand to the trial court for resentencing with a score of 0 points for OV 19 because I believe that there is categorically insufficient evidence to score OV 19 at 25 points on this record.¹

I. WHETHER ATTEMPTED VIOLATION OF MCL 800.283a NECESSARILY REQUIRES A SCORE OF 25 POINTS FOR OV 19

Today, this Court first has been asked to determine whether attempted violation of MCL 800.283a necessarily requires a score of 25 points for OV 19.

MCL 800.283a reads:

- (1) "A person shall not sell, give, or furnish, or aid in the selling, giving, or furnishing of, a cellular telephone or other wireless communication device to a prisoner in a correctional facility, or dispose of a cellular telephone or other wireless communication device in or on the grounds of a correctional facility.
- (2) A prisoner shall not possess or use a cellular telephone or other wireless communication device in a correctional facility or on the grounds of a correctional facility except as authorized by the department of corrections.
- (3) A cellular telephone or other wireless communication device sold, given, furnished, possessed, or used in violation of this section is subject to confiscation and disposal under this section as contraband. If a cellular telephone or other wireless communication device is confiscated under this section, and the cellular telephone or other wireless device is serviceable but no longer needed for purposes of a criminal prosecution under this section, the cellular telephone or other wireless device shall be donated to a nonprofit organization that provides cellular telephones and other wireless communication devices to military personnel, or to any other charity approved by the warden of the facility where the device was confiscated."

MCL 800.283a.

Thus, MCL 800.283a is solely about cellphones in the correctional facility context. Therefore, I think that this Court's analysis regarding OV 19 should stop at cellphones because the

¹ I do not believe that MCL 777.49(b) or (c) apply; thus, I believe that OV 19 should be scored at 0 points under MCL 777.49(d).

question before us only asks about MCL 800.283a as regards MCL 777.49, not about MCL 777.49 (which provides for the scoring of OV 19) as a whole. The question of how to score OV 19 under MCL 777.49 as relates to other offenses need not—and should not—be answered by this Court today; this question should remain open until raised by the appropriate case(s).

Therefore, I disagree with the majority’s decision to interpret MCL 777.49 more broadly than we are asked to do. I would constrain our holding to the question presented: whether attempted violation of MCL 800.283a necessarily requires a score of 25 points for OV 19. I concur with the majority that it does not, and that only offense and post-offense conduct that creates a significant likelihood of harm to the security of the penal institution necessitates a score of 25 points for OV 19.

II. WHETHER THERE IS SUFFICIENT EVIDENCE TO SCORE OV 19 AT 25 POINTS ON THIS RECORD

Having found that attempted violation of MCL 800.283a does not necessarily require a score of 25 points for OV 19, this Court next has been asked to determine whether there is sufficient evidence to score OV 19 at 25 points on this record. The majority concludes that there could be sufficient evidence to score OV 19 at 25 points on this record and remands to the trial court with the potential for the trial court to score OV 19 at 25 points on this record. I respectfully dissent because I believe that there is insufficient evidence to score OV 19 at 25 points on this record. Therefore, I would remand to the trial court for resentencing with a score of 0 points for OV 19.

As the majority notes, MCL 777.49(a) instructs courts to score OV 19 at 25 points when “[t]he offender by his or her conduct threatened the security of a penal institution or court.” MCL

777.49(a). As the majority points out, a score of 25 points “is among the highest provided for by any variable in the Michigan sentencing guidelines.” Majority Opinion at 8. I agree with the majority’s holding that MCL 777.49(a) requires conduct to “creat[e] a significant likelihood of harm to the security of a penal institution or court”—in the context of (attempted) possession of a cellphone. *Id.* at 9.

This Court reviews the trial court’s factual determinations at sentencing for clear error. *People v Babcock*, 469 Mich 247, 264 (2003). Seeing no clear error, I accept the trial court’s factual findings as not clearly erroneous. I do not believe that there is sufficient evidence to score OV 19 at 25 points on this record under the majority’s new standard. On May 21, 2016, Defendant-Appellant was found alone in a prison bathroom “with a cell phone.” JA12; JA46. A cellphone charger was then found in his prison cell. *Id.* Defendant-Appellant was charged with one count of possession and one count of attempted possession of a cellphone by a prison inmate, and he ultimately pled guilty to the attempted possession charge in exchange for dismissal of the possession charge. JA10, JA 31–32. The Department of Corrections’s presentence investigation report did not develop any other facts regarding Defendant-Appellant’s acquisition of the cellphone or use thereof. JA 15–29. At the sentencing hearing, defense counsel indicated that Defendant-Appellant’s cellmate (who was serving a life sentence) had signed an affidavit a year and a half later, indicating that the cellphone belonged to him. JA46. Additionally, defense counsel indicated that the cellphone was only found close to Defendant-Appellant, not physically on him. *Id.*

In this case, there is simply no evidence that Defendant-Appellant ever used the cellphone at issue, nor is there any evidence that Defendant-Appellant intended to use the cellphone for harmful purposes. The majority holds that “[t]he plain meaning of the phrase ‘conduct

threaten[ing] the security of a penal institution’ encompasses only offense and post-offense conduct creating a significant likelihood of harm to the security of a penal institution. Absent other aggravating circumstances, attempted violation of MCL 800.283a alone does not fall within that definition.” Majority Opinion at 2. If the evidence on this record is potentially enough to result in a score of 25 points for OV 19, I don’t know what could not pass muster in the eyes of a trial court inclined to assign such a score. Thus, I disagree with the majority’s conclusion that there could be sufficient evidence to score OV 19 at 25 points on this record. There is no evidence on this record to indicate that Defendant-Appellant’s “conduct create[d] a significant risk that an inmate will escape, cause physical harm to an inmate or corrections officer, or commit a crime in the outside world.” Majority Opinion at 10. As the majority holds, “a prisoner’s possession or attempted possession of a cellphone, by itself and absent any other aggravating conduct, does not meet the statutory criteria of creating a significant risk of harm to a prison’s security under MCL 777.49(a).” *Id.* at 13.

Thus, based on the majority’s holding that only offense and post-offense conduct that creates a significant likelihood of harm to the security of the penal institution necessitates a score of 25 points for OV 19, I would hold that there is insufficient evidence to score OV 19 at 25 points on this record. Therefore, I respectfully dissent from the majority’s holding that there could be sufficient evidence to score OV 19 at 25 points on this record. I would reverse the judgment of the Court of Appeals, vacate Defendant-Appellant’s sentence, and remand to the trial court for resentencing with a score of 0 points for OV 19.

III. CONCLUSION

In conclusion, I concur with the majority's conclusion that attempted violation of MCL 800.283a does not necessarily require a score of 25 points for OV 19, and that only offense and post-offense conduct that creates a significant likelihood of harm to the security of the penal institution necessitates a score of 25 points for OV 19. However, I would not extend our holding to MCL 777.49 as a whole; I would only analyze the statute as it relates to MCL 800.283a. I respectfully dissent from the majority's conclusion that there could be sufficient evidence to score OV 19 at 25 points on this record. I believe that there is insufficient evidence to score OV 19 at 25 points on this record, and thus, I would remand to the trial court for resentencing with a score of 0 points for OV 19.

Sarah I. Siegel

Applicant Details

First Name	Cameron
Last Name	Silbar
Citizenship Status	U. S. Citizen
Email Address	cameronsilbar@gmail.com
Address	<div> <div>Address</div> <div> <div>Street</div> <div>1221 W. 3rd St, 146</div> <div>City</div> <div>Los Angeles</div> <div>State/Territory</div> <div>California</div> <div>Zip</div> <div>90017</div> <div>Country</div> <div>United States</div> </div> </div>
Contact Phone Number	8186443587

Applicant Education

BA/BS From	Flagler College
Date of BA/BS	December 2018
JD/LLB From	Loyola Law School
	http://www.lls.edu
Date of JD/LLB	May 21, 2023
Class Rank	5%
Law Review/Journal	Yes
Journal(s)	Loyola Law Review
Moot Court Experience	No

Bar Admission**Prior Judicial Experience**

Judicial Internships/Externships	Yes
Post-graduate Judicial Law Clerk	No

Specialized Work Experience

Recommenders

Delfino, Rebecca
rebecca.delfino@lls.edu
2137361498

Murphy, Erin
Erin.Murphy@lls.edu

Tighe, Maureen
maureen_tighe@cacb.uscourts.gov

This applicant has certified that all data entered in this profile and any application documents are true and correct.

CAMERON SILBAR

1221 W. 3rd St., #146 • Los Angeles, CA 90017 • (818) 644-3587 • Cameron.Silbar@lls.edu

April 14, 2023

The Honorable Jamar K. Walker
United States District Court for the Eastern District of Virginia
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510

Dear Judge Walker:

I am currently a third-year student at LMU Loyola Law School, where I am in the top five percent of my class with a GPA of 4.15 and a Senior Articles Editor for the Law Review. Throughout my studies, I have continually sought out opportunities to improve my litigation skills in both public and private practice. These experiences have included externing for Chief Judge Maureen Tighe of the U.S. Bankruptcy Court for the Central District of California, interning at the Los Angeles County District Attorney's office, serving as a summer associate at Gibson Dunn & Crutcher, and providing research assistance to Professor Rebecca Delfino. It is this same desire to improve that drives me to apply for a clerkship position in your chambers for the 2024 term.

As a research assistant to Professor Delfino, I researched cutting-edge legal issues facing courts and assisted her in drafting a law review article that addressed evidentiary issues surrounding the introduction of deepfake technology in courtrooms. My externship with Chief Judge Tighe, in turn, allowed me to build upon those research and writing skills while introducing me to the internal dynamics of federal court. While working in chambers, I was entrusted with drafting orders on a wide array of motions, and I became comfortable making recommendations to the Chief Judge and her clerks in areas of the law in which I initially had little familiarity. More recently, I had the opportunity to experience criminal and civil litigation from an advocacy perspective at the L.A. County District Attorney's Office—where I prepared a misdemeanor vandalism case for trial, drafted trial briefs, and conducted preliminary hearings—and at Gibson Dunn & Crutcher, where I drafted substantive memorandums, drafted sections of a deposition, and prepared requests for production.

My externship with Chief Judge Tighe taught me the invaluable benefit of judicial mentorship, and I hope to cultivate a similar relationship working in your chambers. To that end, please find enclosed my resume and law school transcript, as well as a writing sample and three letters of recommendation from Chief Judge Tighe and Professors Delfino and Erin Murphy. Thank you for your consideration.

Respectfully yours,



Cameron Silbar

Cameron Silbar

1221 W. 3rd Street, #146 | Los Angeles, CA 90017 | (818) 644-3587 | Cameron.Silbar@lls.edu

Education

LMU Loyola Law School

Los Angeles, CA

J.D. Candidate

May 2023

GPA/Rank: 4.15/Top 5% (13th/267) (Cumulative as of Fall 2022)

High Grades: Civil Procedure (A+* First Honors); Criminal Procedure (A+* First Honors & Student Model Answer); Adjudicative Criminal Procedure (A+ First Honors); Evidence for Trial Lawyers (A+* First Honors); Evidence (A+); Torts (A+); Property (A+); Appellate Advocacy (A+ First Honors)

Law Review: Loyola of Los Angeles Law Review, *Articles Editor* (Spring 2022 – Present)

Of Note: Poehls/Hobbs District Attorney Practicum, *Member* (Fall 2021 – Spring 2022); Sayre MacNeil Scholar (Fall 2021 – Present); St. Thomas Moore Honor Society (Fall 2021 – Present)

Flagler College

St. Augustine, FL

B.A. in Philosophy; Minor in Law magna cum laude

December 2018

GPA: 3.73

Honors: Department Award for Academic Achievement in Humanities (2018); President's List for outstanding academic achievement (2017); Omicron Delta Kappa Leadership Society (2015 – Present)

Athletics: Men's Soccer, *Captain* (Fall 2018); *Player* (Fall 2014 – Fall 2018)

- Earned a 100% scholarship for athletic excellence in senior season; All-Academic Team (2016, 2018)

Activities: Flagler College Mock Trial Team, *Member* (August 2016 – May 2017); Student Athlete Advisory Committee, *Member* (August 2016 – December 2018)

Experience

Gibson, Dunn & Crutcher LLP

Irvine, CA

Litigation Associate

Commencing Fall 2023

Summer Associate

May 2022 – July 2022

- Drafted memorandum regarding nuanced legal issue in a patent infringement case regarding whether user activation of dormant circuitry constitutes a material modification so to preclude a finding of patent infringement
- Drafted research memorandum regarding Independent Medical Examinations in a case against the United States
- Drafted requests for production, and the background section of an expert witness for a deposition, in a case involving ERISA and Breach of Fiduciary Duty

Los Angeles County District Attorney's Office

Inglewood, CA

Certified Law Clerk

January 2022 – April 2022

- Prepared a misdemeanor vandalism case for trial, including drafting voir dire questions, writing opening and closing statements, and preparing for the direct and cross examination of witnesses
- Drafted trial briefs for oral argument, including a 1538.5 Motion to Suppress and a Motion in Limine
- Conducted preliminary hearings, interviewed witnesses, and prepared case summaries

U.S. Bankruptcy Court for the Central District of California

Los Angeles, CA

Judicial Extern to Chief Judge Maureen A. Tighe

Summer 2021

- Reviewed motions, prepared summaries of legal arguments and work-ups for court rulings involving default judgments and motions for relief from stay
- Researched and assisted in drafting ruling involving § 324 of the US Bankruptcy Code – Motion to Remove Trustee

LMU Loyola Law School

Los Angeles, CA

Research Assistant to Professor Rebecca Delfino

Summer 2021

- Assisted the Professor in developing new evidentiary rules to combat the impact of Deepfakes inside of the courtroom
- Helped to write law review article analyzing evidentiary issues surrounding the introduction of Deepfakes into the courtroom

Strange Family Vineyards

Malibu, CA

Tasting Room Manager

June 2019 – March 2020

- Established a tasting room and increased Club memberships by 100% in six months
- Calculated and organized all production needs including inventory, bottling, and labeling

Interests: Soccer, music, reading, exercise, wine, meditation, travel



Loyola Law School
Loyola Marymount University
Los Angeles

Student Name: **Cameron E. Silbar**

Student ID:

Page 1

Printed: 02-15-2023

Program: **Law****Transcript Summary**

	Attempted Credits	Earned Credits	GPA
Law School Credits	75	73	4.15
Transfer Credits	--	--	--
Overall	75	73	4.15

2020 Fall Semester (08/17/2020 - 12/16/2020)

Program: Juris Doctor Day Program

LAWB1001 Contracts	Aragaki	5	A-
LAWD1001 Criminal Law	Goldman	4	B+
LAWJ1001 Civil Procedure	Zimmerman	2	A+ I
LAWJ1002 Legal Research and Writing	Bensinger	2	A I
LAWL1001 Property	Trisolini	3	A+ I

	Attempted Credits	Earned Credits	GPA
Term	16	16	3.88
Cum	16	16	3.88

2021 Spring Semester (01/11/2021 - 05/13/2021)

Program: Juris Doctor Day Program

LAWD1011 Adjudicative Criminal Procedure	Kennedy	3	A+
LAWJ1001 Civil Procedure	Zimmerman	3	A+ I
LAWJ1002 Legal Research and Writing	Bensinger	2	A I
LAWK1001 Torts	Selmi	5	A+
LAWL1001 Property	Trisolini	2	A+ I

	Attempted Credits	Earned Credits	GPA
Term	15	15	4.36
Annual	31	31	4.11
Cum	31	31	4.11

Dean's Honor List 2020-2021 Academic Year**Good Standing****2021 Summer Session 1 (05/24/2021 - 07/22/2021)**

Program: Juris Doctor Day Program

LAWJ4005 Judicial Process Field Placement	Delfino	0	P
LAWJ5000 U.S. Bankruptcy Courts (Woodland Hills)	Delfino	3	P

	Attempted Credits	Earned Credits	GPA
Term	3	3	0.00
Cum	34	34	4.11

2021 Fall Semester (08/16/2021 - 12/17/2021)

Program: Juris Doctor Day Program

LAWD4007 Criminal Procedure	Lapp	4	A+*
LAWJ2003 Evidence	Gold	4	A+
LAWJ4119 Hobbs/Poehls Trial Advocacy	Poehls	3	A-
LAWO6011 Law Review Staff	Hughes	1	P I
LAWO7021 Byrne Trial Advocacy Team	Poehls	0	W

	Attempted Credits	Earned Credits	GPA
Term	12	12	4.27
Cum	46	46	4.15

2022 Spring Semester (01/10/2022 - 05/12/2022)

Program: Juris Doctor Day Program

LAWC2003 Constitutional Law	Levinson	4	A
LAWD5001 Hobbs/Poehls District Attorney Field Placement	Poehls	4	P
LAWJ2004 Ethical Lawyering	Delfino	3	A
LAWJ4015 California Civil Procedure: Practice & Procedure	Grossi	2	A
LAWO6011 Law Review Staff	Hughes	1	P I
LAWO9003 Hobbs/Poehls District Attorney Seminar	Poehls	1	A

	Attempted Credits	Earned Credits	GPA
Term	15	15	4.00
Annual	30	30	4.14
Cum	61	61	4.12

Dean's Honor List 2021-2022 Academic Year**Good Standing****2022 Fall Semester (08/22/2022 - 12/20/2022)**

Program: Juris Doctor Day Program

LAWA4003 Business Associations	Guttentag	4	A
LAWJ4012 Appellate Advocacy	Delfino	3	A+
LAWJ4087 Evidence for Trial Lawyers	Murphy	3	A+*
LAWJ8065 Fundamentals of Bar Exam Writing	Boylan	2	P
LAWO6012 Law Review Editor	Bakhshian	2	YL

	Attempted Credits	Earned Credits	GPA
Term	14	12	4.30
Cum	75	73	4.15

End of Transcript

Issued to:

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CAMERON.SILBAR@LLS.EDU

This transcript processed and delivered by Parchment

Justin Melchor
Justin Melchor, Law School Registrar





Loyola Law School

Loyola Marymount University
Los Angeles

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Loyola Law School, Los Angeles first opened its doors in 1920 and received its accreditation from the American Bar Association in 1937. In 1990, Loyola Law School was awarded a Chapter in the Order of the Coif in 1990. The Law School is currently a member of the Association of American Law Schools. In accordance with the Family Educational Rights and Privacy Act of 1974 (FERPA), transcripts cannot be released to a third party without the written consent of the owner of the record (student). As the first ABA-approved law school in California with a pro bono requirement for graduation, Loyola Law is committed to legal ethics and the public interest, and has produced top attorneys for nearly a century.

Academic Good Standing

All students, except first year law students in the J.D. Program are considered to be in good standing with the Law School unless stated otherwise. First year J.D. students are considered in good standing following the completion of their first year in law school.

Honors

First Honors (FH) - The First Honors Award is bestowed upon the student that received the highest grade in the class for all classes that are required to be normalized under the Law School's grading policy.

Juris Doctor (JD) Grading Scale

Numeric Grading Scale

Students entering the law school prior to Fall 2004 were issued numeric grades starting from a range of 55 – 100. Prior August 1999, 60 was the minimum grade required to earn credit toward a course. Beginning with the entering class of Fall 1999, 70 was the minimum grade required to earn credit toward a course. The grade of P indicates that the student would have earned a minimum letter grade of C but it is not equivalent to any letter grade. The grade of F was equivalent to the numeric grade of 55 and is counted in the grade point average. The grade of AU indicates course was audited.

Letter Grading Scale

Current Grading Scale (Effective 2004)

Grade	Grade Points
A+	4.667
A	4.333
A-	4.000
B+	3.667
B	3.333
B-	3.000
C+	2.667
C	2.333
C-	2.000
D	1.333
F	0.333
P	0.000

Unit credit is received but is not included in the grade point average calculation and indicates a student may have earned at least a C but the grade is not the equivalent of any letter grade.

Mark Explanation

AU	Audit -- No credit or grade is earned.
I	Incomplete -- All course requirements have not been satisfied.
W	Withdrawal -- Withdrew from the course prior to the conclusion of the semester.
YL	Year-Long enrollment. Final grade will be recorded following the assignment final grade at the end of the spring semester.

Class Rankings (JD Students Only)

Class percentile ranking for each year-of-study (YOS) and division are computed annually, based upon the relevant cumulative grade point average at the conclusion of the academic year (spring semester). The percentile rankings are expressed in grade point cut-offs for specific tiers for each year-of-study. The ranking tiers are expressed by the top five, ten, fifteen, twenty, twenty-five, thirty, thirty-five, forty, fifty and bottom fifty percent of each class. Class rankings are not divulged without the express consent of the student or graduate with a written request submitted to the Office of the Registrar.

Graduation Honors are awarded based on their cumulative GPA as follows: 4.23 and above summa cum laude and 4.03 – 4.22 magna cum laude. Students whose GPA is below 4.03 but rank in the top 10% of the graduating class will graduate cum laude. Dean's Honor List: Students are placed on the Dean's Honor List based on their annual grade point average (GPA). For students entering after Fall 2004 in the awardees will have a GPA of (3.83) or higher; for students who entered after Fall 2001 (85.00) and students prior to Fall 2001 (83.00).

Master of Laws Grading Scale

The current LLM grading system is an adjectival, based upon a five point scale for computational purposes to determine a grade point average. Grades on the L.L.M. grading system are not mandate to be normalized. For tuition purposes, a grade of "Fair" or "CP" equates to a "C" on the J.D. grading system.

Grade	Grade	Grade Points	Comments
EX	Excellent	5.000	
VG	Very Good	4.000	
GD	Good	3.000	
CP	Fair	2.000	
NC	No Credit	0.000	Included in calculation of GPA but no credit is earned.
PASS	Pass	0.000	Not included in calculation of the GPA but unit credit is earned.

Mark Explanation

AU	Audit -- No credit or grade is earned.
Audited	Audit -- No credit or grade is earned.
I	Incomplete -- All course requirements have not been satisfied.
Incomplete	Incomplete -- All course requirements have not been satisfied.
W	Withdrawal -- Withdrew from the course prior to the conclusion of the semester.
YL	Year-Long enrollment. Final grade will be recorded following the assignment final grade at the end of the spring semester.

Prior to Fall 2002, the Law School used the numeric grading scale grades used for the Master of Laws (LL.M.) in Taxation program as referenced above.

LLM Tax Honors are awarded to graduates with the following cumulative grade point averages (with no rounding) will receive their Program degrees with the corresponding distinction: Cumulative grade point average ≥ 3.80 and < 4.20 "with distinction" Cumulative grade point average ≥ 4.20 and < 4.60 "with high distinction" Cumulative grade point average ≥ 4.60 "with highest distinction". Students meeting the requirements for graduation with Honors (as specified by Section 1.2 above) would then receive their degrees: Cumulative grade point average ≥ 4.00 and < 4.20 "with honors and distinction" Cumulative grade point average ≥ 4.20 and < 4.60 "with honors and high distinction" Cumulative grade point average ≥ 4.60 "with honors and highest distinction".

Repeated Courses

Repeated courses that are included in the grade point average calculation will bear a revision code of (I) to the right of the assigned grade. Conversely, a repeated course that is to be excluded from the grade point average calculation will bear the revision code of (E). Any course that is repeated will bear the revision code of E, except the last grade earned, which will have the revision code I.

Note: both revision codes I and E appear on the transcript in italicize and should not be confused with the mark of I which stands for Incomplete.

Revised 9/2015

This Academic Transcript from Loyola Law School located in Los Angeles, CA is being provided to you by Parchment, Inc. Under provisions of, and subject to, the Family Educational Rights and Privacy Act of 1974, Parchment, Inc. is acting on behalf of Loyola Law School in facilitating the delivery of academic transcripts from Loyola Law School to other colleges, universities and third parties.

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April 18, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I am writing this letter to recommend Cameron Silbar for the position of judicial clerk in your chambers.

I met Mr. Silbar when he applied to serve as my research assistant after his first year of law school. In that capacity, he assisted in my scholarship in artificial intelligence and deepfakes. I found his research comprehensive and thorough. He made important contributions to that scholarship.

In the fall of 2022, Cameron was a student in my appellate advocacy class, where earned the highest grade in the class. Without a doubt, he was the top student in the class. Both his work product and engagement with the material were impressive. He demonstrated excellent legal writing, analysis, and research skills and an outstanding work ethic; he also made thoughtful and interesting contributions to the class discussions.

As his professor and employer, I have had multiple opportunities to review Mr. Silbar's oral and written skills and interact with him on various legal subjects inside and outside of the classroom. We have had an opportunity to speak about his desire to serve as a post-grad clerk in a judicial chamber. I encouraged him to apply because he has the required skill set to be an excellent law clerk; he is smart, intellectually curious, and able to synthesize legal concepts into cogent written analysis. Cameron is hardworking and committed, and thoughtful. He works well alone and with fellow law student colleagues. He also presents as having good personal and professional judgment. In addition, he has performed well in other courses at Loyola. His resume also shows a strong background of solid academic achievement at Loyola and other institutions. I give my highest recommendation and endorsement.

I would be happy to discuss Mr. Silbar with you in further detail upon your request.

Respectfully yours,

Rebecca A. Delfino
Associate Dean of Clinical Programs and Experiential Learning
Faculty Advisor Scott Moot Court Program
Professor of Law

Rebecca Delfino - rebecca.delfino@lls.edu - 2137361498

April 18, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I am delighted to recommend Cameron Silbar as a law clerk in your esteemed chambers.

To give context to my opinions here, I would like to share a bit about myself. I graduated from Loyola Law School in 2012. For about five years, I have been a trial attorney in Office of the Federal Public Defender in Los Angeles. Before that, I clerked for the late Honorable Harry Pregerson on the Ninth Circuit Court of Appeals. Prior to clerking, I was an associate at the boutique criminal defense firm Lightfoot Steingard & Sadowsky LLP. I teach Litigating Evidence for Trial Lawyers at Loyola Law School. I am also the Secretary of the Federal Bar Association's LA Chapter.

I say all of this about myself only to underscore my faith in Cameron. I met him as a student in my class at Loyola. In this class, each student is assigned a real federal criminal or civil case file with evidentiary issues that were litigated. Every week, the students prepare to argue a position from that case file. Cameron always came to class thoroughly prepared, ready to present a cogent argument, and genuinely open to feedback. He showed true engagement with the law and consideration to all sides of an issue. I am familiar with his strong writing skills from two written motions. His writing is clear, concise, and well-reasoned. It was no surprise to learn that he earned the highest grade in my class, and that his academic record is otherwise superlative.

Cameron will be a fantastic clerk and lawyer. He has a unique blend of raw skill, devotion to excellence, and honest humility. This combination of traits is hard to find, yet I think essential to a successful law clerk. And from getting to know him and seeing him with his peers, I can say that he is a true pleasure to be around. I know how closely law clerks and chambers staff must work together to support their judge, and anyone would be lucky to have Cameron on their team.

I hope this letter was helpful as your Honor consider applications. If you have any questions whatsoever, please do not hesitate to contact me at Erin_Murphy@fd.org, or at (480) 220-1828.

Respectfully yours,

Erin Murphy
Deputy Federal Public Defender
Office of the Federal Public Defender
321 E. 2nd Street
Los Angeles, CA 90012

Erin Murphy - Erin.Murphy@lls.edu

April 18, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I unequivocally recommend Cameron Silbar for a clerkship in your chambers. Cameron worked as an extern for me during his first summer after law school. He wrote a few substantive memos for motions to dismiss as well as shorter motions for relief from the automatic stay. He also participated in an extensive extern education program. He was conscientious, thorough, and diligent. I have had externs every semester for almost 20 years. Cameron has been one of the best.

I have known Cameron since he was in kindergarten. Although I did not know him or his family well, I watched him grow up in the same schools as my daughter. I could tell how talented and hard-working he was even at a young age. I noticed him because he was shorter than most boys in elementary school but was easily the most talented kid on the soccer field and clearly worked harder than any other player. At the same time, he was an industrious and serious student. His kindness and good nature were already apparent to me then as he was unfailingly kind to my daughter who struggled in school with a learning disability.

I had moved and lost track of Cameron after high school graduation and was very pleased that I noticed his application when it arrived in chambers. It was only because of COVID and my law clerk working from home that day that I looked at the mail and even noticed his letter. In his usual humble way, Cameron did not ask anyone to contact me in advance or ask any favors. He simply applied in the usual way. I was curious whether he was still the same young man I had observed in high school. To my great pleasure, he was even more serious, kind and hard working.

I believe his work for you would be thorough and accurate. I have no doubt he would be a team player, taking care of whatever the judge's needs are. He has approached his legal studies in the same manner as he has approached things previously -- working on mastery and being one of the best.

Please feel free to contact me if I can answer any of your questions.

Respectfully yours,

MAUREEN TIGHE
U.S. BANKRUPTCY JUDGE

Maureen Tighe - maureen_tighe@cacb.uscourts.gov

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Writing Sample

Description:

The attached writing sample is a motion in limine that I wrote during Fall 2022. I wrote the motion for my Evidence for Trial Lawyers class, for which I earned an A+* and First Honors. Any edits to the brief are entirely my own.

For this assignment, the professor provided the opposition's motion in limine and a closed library of cases. The professor restricted the length of the motion to eight pages and requested that we omit the "Statement of Facts" section. Each student was assigned to either the US Attorney or the Federal Public Defender's Office.

In this case, the defendant was charged with aggravated sexual abuse. The prosecution hoped to introduce Doctor Burgess as an expert in "Rape Trauma Syndrome" to explain the purportedly counterintuitive behavior of the alleged victim S.R. during the sexual encounter. This motion argues that the US Attorney should be precluded from introducing expert testimony regarding "Rape Trauma Syndrome" in a sexual assault case for three reasons: (1) because the discipline is inherently unreliable; (2) because the expert testimony is not helpful to the trier of fact; and (3) because any purported probative value is substantially outweighed by its prejudicial effect.

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(818) 644-3587

Attorney for Defendant
JORGE MANUEL TEIXEIRA

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

v.

JORGE MANUEL TEIXEIRA,

Defendant.

Case No. 09-275-GHK

**Motion In Limine to Exclude
Government's Expert**

Defendant Jorge Manuel Teixeira, through his counsel of record Deputy Public Defender
Cameron Silbar, hereby files this motion in limine to exclude the government's expert.

Respectfully submitted,

DATED: November 22, 2022

By /s/

Cameron Silbar
Attorney for TEIXEIRA

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I. INTRODUCTION

The admissibility of expert testimony is primarily governed by Federal Rules of Evidence 702 and 703 (hereinafter “Rule 702” & “Rule 703”). These rules impose a gatekeeping function on courts to ensure that any expert testimony admitted is not only relevant but reliable. *See* Fed. R. Evid. 702; *see also* Fed. R. Evid. 703. Specifically, Rule 702 requires expert testimony to be (1) helpful to the trier of fact; (2) based on sufficient facts or data; (3) the product of reliable principles and methods; (4) reliably applied to the facts in the present case. Fed. R. Evid. 702.

The prosecution’s Rule 16 disclosure states that Dr. Burgess will testify to the following three items: (1) “that during the attack, S.R. complied with the intent to minimize sexual injury to herself”; (2) “that it is common for victims of sexual assault not to scream loudly for help or jump up and run during an attack”; and (3) that “victims of sexual assault often delay reporting a sexual assault and thus any delay by Ms. R in reporting the assault was not atypical.” Gov’t’s Rule 16 Disclosure. This testimony is inadmissible “expert” testimony because it is inherently unreliable, and it invades the province of the jury.

II. ARGUMENT

A. Rape Trauma Syndrome as a Discipline Is Inherently Unreliable

To comply with the reliability requirement in Rule 702, the court in *Daubert* provided trial courts with a list of factors to consider when evaluating the reliability of expert scientific testimony. *See Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S. 579 (1993). These include: (1) whether a theory or technique can be (and has been tested); (2) whether the technique or theory has been subject to peer review and publication; (3) the known or potential rate of error of the technique or theory when applied; (4) the existence and maintenance of standards and controls; and (5) whether the technique or theory has been generally accepted in the scientific community. *Id.* at 592–94.

The courts gatekeeping function, and the application of these factors, has been extended to nonscientific testimony. *Kumho Tire Co. Ltd. v. Carmichael*, 526 U.S. 137, 147 (1999). While no

1 single factor is determinative, courts must ensure that an expert, “whether basing testimony upon
2 professional studies or personal experience, employs in the courtroom the same level of intellectual
3 rigor that characterizes the practice of an expert in the relevant field.” *Id.* at 141, 152.

4 To aid in this function, the Advisory Committee Notes to Rule 702 (hereinafter “ACN”)
5 offered supplemental factors for courts to consider when analyzing non-scientific testimony. These
6 include: (1) whether the opinion grows from independent research or was developed for purposes of
7 litigation; (2) whether the expert unjustifiably extrapolated from an accepted premise to an unfounded
8 conclusion; (3) whether the expert adequately accounted for alternative explanations; and (4) whether
9 the field is known to reach reliable results in the area of the proposed testimony. Fed. R. Evid. 702
10 Advisory Committee Notes.
11

12 Dr. Burgess’ testimony is unreliable because it is based on the fundamentally flawed theory of
13 rape trauma syndrome. *See State v. Saldana*, 324 N.W.2d 227, 230 (Minn. 1982) (“[R]ape syndrome
14 is not the type of scientific test that accurately and reliably determines whether a rape has occurred.”);
15 *see also People v. Bledsoe*, 36 Cal. 3d 236, 250 (1984) (“Because the literature does not even purport
16 to claim that the syndrome is a scientifically reliable means of proving that a rape occurred, we
17 conclude that it may not properly be used for that purpose in a criminal trial.”). That is because,
18 “unlike fingerprints, blood tests, lie detector tests, etc. rape trauma syndrome was not developed to
19 determine the truth or accuracy of a particular event.” *Bledsoe*, 36 Cal. 3d at 250. Instead, it was
20 developed by counselors as a therapeutic tool. *Id.*
21

22 One consequence of this practice being therapeutic instead of investigative is that counselors are
23 taught not to probe their victims for inconsistencies. *Id.* Nor are counselors to independently
24 investigate the allegations. *Id.* Instead, counselors are instructed to believe in the victim’s story
25 irrespective of all evidence to the contrary. *Id.* As professional literature on the topic indicates,
26 “judgement is appropriate for courtrooms, not for psychologists’ offices.” Kilpatrick, *Rape Victims:*
27
28

1 *Detection, Assessment and Treatment* (Summer 1983) *Clinical Psychologist* 92, 94.

2 Dr. Burgess' article titled "Rape Trauma Syndrome" submitted as the Prosecution's "Exhibit A"
3 reflects this lack of scrutiny. She writes, "the purpose of this paper is to report the immediate and
4 long-term effects of rape *as described by the victim*." Burgess, *Rape Trauma Syndrome*, *Am. J.*
5 *Psychiatry* 981 (1974) (emphasis added). Thus, her study, which serves as the basis for her expert
6 opinion in this case, is not an independent investigative method designed to get at truth. Instead, it is a
7 therapeutic tool designed to tell the story of victims. If "judgement is appropriate for courtrooms, not
8 for psychologists," rape trauma syndrome is appropriate for counselors' offices, not for jurors.

10 Rape trauma syndrome as a discipline is also unreliable because it does not reflect symptoms that
11 are unique to victims of rape. Instead, it is an "umbrella concept." *See Bledsoe*, 36 Cal. 3d at 250
12 ("The method does not consist of narrow set of criteria or symptoms whose presence demonstrates
13 that the client or person has been raped; rather. . . it is an 'umbrella' concept, reflecting the broad
14 range of emotional trauma experienced by the clients of rape counselors."); *see also Commonwealth v.*
15 *Dunkle*, 529 Pa. 168, 173 (1992) ("[T]he principal flaw with the notion of a specific syndrome is that
16 no evidence indicates that it can discriminate between sexually abused children and those who have
17 experienced other trauma."). Dr. Burgess' article alludes to this when describing the syndromes
18 effects: "the time of onset varies from victim to victim" and "women may experience an extremely
19 wide range of emotions." Burgess, *supra* at 982. The issue then is that Dr. Burgess' litany of
20 symptoms including "anger," "self-blame," "revenge," and a "wide gamut" of others, could just as
21 easily be associated with any other kind of trauma. *Id.* at 983. Consequently, it is hard to see how such
22 information would be "helpful to the jury." Instead, as will be discussed in part C, it runs the risk of
23 prejudicing the jury with evidence of symptoms that could have arisen from unrelated trauma.

26 In sum, rape trauma syndrome is unreliable under either a strict application of the *Daubert* factors
27 or ACN's factors. The discipline is inherently flawed; it is based on therapeutic rather than
28

investigative methods; and it fails to account for alternative explanations for its conclusions.

B. Dr. Burgess' Testimony Is Not Helpful to The Trier of Fact, And It Invades The Province of The Jury

Federal Rule of Evidence 704 (hereinafter "Rule 704") bars an expert witness from stating an opinion as to "whether the defendant did or did not have a mental state or condition that constitutes an element of the crime charged or of a defense" because "those matters are for the trier of fact alone." Fed. R. Evid. 704. Relatedly, "it is the juror's responsibility to determine credibility by assessing the witnesses and witness' testimony in light of their own experience." *United States v. Binder*, 769 F.2d 595, 602 (9th Cir. 1985). Therefore, "an expert is not permitted to testify specifically to a witness' credibility or to testify in such a manner as to improperly buttress a witness' credibility." *United States v. Candoli*, 870 F.2d 497, 506 (9th Cir. 1989). Therefore, expert testimony is inadmissible to the extent it goes to an "ultimate issue" in the case and/or usurps the jury's function of assessing a witness's credibility.

The prosecution concedes it would be improper for Dr. Burgess to testify as to whether S.R. suffers from "rape trauma syndrome." Joint Mot. in Lim. 13. That is because such a determination is the ultimate issue facing the jury. *See* Fed. R. Evid. 704. Consequently, courts have reiterated that "rape trauma syndrome should not be utilized as the instrument to establish the guilt or innocence of one accused of rape." *See State v. Taylor*, 663 S.W.2d 235, 241 (Mo. 1984); *see also Bledsoe*, 36 Cal. 3d at 248 (holding that the prosecution's introduction of rape trauma syndrome as a means of proving that the rape had occurred was prejudicial error). To the extent that Dr. Burgess testifies to this effect her testimony is inadmissible.

Even in the absence of such a diagnosis, Dr. Burgess' testimony is still inadmissible because it usurps the role of the jury. For example, the court in *Binder*, overturned a defendant's conviction for child molestation where experts testified that the alleged victims had the ability to distinguish truth from falsehood. 769 F.2d at 598, 602. The court reasoned that even in the absence of testifying

specifically to the complaining witness's credibility, "the effect of this testimony was to bolster the children's story and usurp the jury's fact-finding function." *Id.* at 602. There was no need for this expert's testimony because jurors do not need additional assistance to determine whether victims are telling the truth. *See id.* The court contrasted the case with a situation wherein the experts were testifying as to the competency of the child to testify. *Id.* There, the expert testimony would be helpful to the jury, and it would not usurp their function. *Id.* However, the expert testimony as proffered, referencing those "particular children" in that "particular case" impermissibly asked the jury to accept the expert's determination that the children were being truthful. *Id.* Consequently, it was prejudicial error to allow that testimony in. *Id.*

Here too, Dr. Burgess's proffered testimony goes directly to S.R.'s credibility. Specifically, Dr. Burgess wants to testify that "S.R. complied with the [incident] to minimize sexual injury to herself," and "any delay by Ms. R in reporting the assault was not atypical." Gov't's Rule 16 Disclosure. The problem with these proffers, like in *Binder*, is that they effectively bolster S.R.'s credibility and usurp the jury's fact-finding function. Both proffers reference the "particular victim" in this "particular case"— exactly the kinds of considerations that concerned the *Binder* court. The introduction of this testimony, like in *Binder*, would be prejudicial error.

The prosecution also hopes to elicit a more general statement that "it is common for victims of sexual assault not to scream loudly for help or jump up and run during an attack." This is so general as to not be helpful to the jury, and yet it still runs the risk of providing a "stamp of scientific legitimacy" to what is essentially a jury's role of assessing the credibility of S.R.'s version of events. The prosecution is correct that in *Hadley*, *Atone*, and *Bighead*, the Ninth Circuit allowed in expert testimony about the general characteristics of sexually abused children. However, they are incorrect to the extent that they see those cases as analogous. Instead, *Hadley*, *Atone*, and *Bighead* are readily distinguishable from Mr. Texeira's because each of those cases involves children.

1 The Supreme Court of Minnesota in *Saldana* illustrates why this distinction is important. In
 2 *Saldana*, the defendant appealed his conviction for rape based on an expert witness who testified to
 3 general post-rape symptoms in concluding that the victim had not fantasized the rape. 324 N.W.2d at
 4 231. The introduction of this testimony impermissibly invaded the jury's role in assessing the alleged
 5 victim's credibility because it was not helpful to the fact finder. *See id.* ("Once a victim is deemed
 6 competent, expert opinions concerning the witness's reliability in distinguishing truth and fantasy are
 7 generally inadmissible because such opinions invade the jury's province to make credibility
 8 determinations."). The court reasoned that the alleged victim was a competent adult so any testimony
 9 pertaining to general symptoms, such as a delay in reporting, bolstered her credibility without being
 10 helpful to the jury. *Id.* However, the court made clear that expert testimony pertaining to a witness's
 11 credibility is not always inadmissible. *Id.* Instead, it should only be allowed in "unusual cases"
 12 wherein it is helpful to the fact finder. *Id.* The court identified two such examples. First, if the victim
 13 is a child. *Id.* Second, in cases involving a mentally challenged adult. *Id.* However, since the alleged
 14 victim in the case was a competent adult, the introduction of testimony that bolstered her version of
 15 events only provided a scientific stamp of approval on an issue that the jury was well placed to decide
 16 themselves. *Id.*

19 Here too, S.R. is an adult woman whose competency has not been challenged. It is the jury's
 20 role to decide whether S.R.'s version of events is true. Like in *Saldana*, allowing in testimony that
 21 only serves to bolster her credibility, without any special need for the information in an "unusual
 22 case" does not help the fact finder. Instead, like in *Saldana*, the jury is well placed to determine
 23 whether S.R.'s lack of resistance points towards rape or consensual sex. This is not an unusual case
 24 involving a minor or a child wherein expert testimony would be helpful in providing the jury with a
 25 perspective that might be too foreign to them. *See United States v. Antone*, 981 F.2d 1059, 1062 (9th.
 26 Cir. 1992) (holding that testimony concerning general characteristics of sexually abused children to
 27
 28

1 explain that it was not unusual for children to fail to report a rape or to return to their abusers was
 2 properly introduced). As mentioned above, that is why each case the prosecution cites for the
 3 proposition that general rape characteristics are admissible involved the “unusual case” of children.
 4 See Joint Mot. in Lim. 1316. Allowing such testimony to come in, even in the absence of an unusual
 5 case, would constitute prejudicial error by invading the province of the jury without providing needed
 6 information to them.

8 **C. The Testimony Is Inadmissible Because Any Purported Probative Value Is**
 9 **Substantially Outweighed by The Prejudicial Effect**

10 Even if this Court finds Dr. Burgess’ testimony helpful to the jury and reliable, it should still
 11 exclude the testimony because its introduction is substantially more prejudicial than probative. Federal
 12 Rule of Evidence 403 (hereinafter “Rule 403”) excludes relevant evidence when its probative value is
 13 substantially outweighed by its prejudicial effect. Fed. R. Evid. 403. “Evidence is unfairly prejudicial
 14 when it is apt to be used for something other than its logical, probative force, e.g., when court
 15 members might dramatically overestimate its value, be confused as to its meaning, or emotionally
 16 react to it.” *United States v. Tomlinson*, 20 M.J. 897, 901 (1985). In the context of experts, courts
 17 should look at the probative value as it relates to the soundness on which the opinion rests rather than
 18 its tendency taken as true to prove the fact at issue. *State v. Taylor*, 663 S.W.2d 235, 240 (Mo. 1984).

20 As illustrated, the doctrine of rape trauma syndrome and the symptoms it purports to reveal
 21 are, at best, suspect. Further, these general characteristics that the doctrine describes are not helpful to
 22 the jury because this is not an unusual case. Instead, what is at issue is two competent adults’
 23 interpretations of a sexual encounter. Dr. Burgess’ purported testimony regarding whether victims
 24 flee, whether they scream, and whether they delay reporting does not aid the jury because they are
 25 already well situated to assess the truth of this generic rape allegation.

27 The evidence must be excluded when its low probative value is weighed against the prejudicial
 28 effect of providing a “scientific stamp of legitimacy” to S.R.’s testimony. The introduction of the

1 symptoms of rape trauma victims, even when stated generally, creates a special aura of reliability and
 2 trustworthiness in an area where jurors of ordinary ability are already competent to ascertain truth.
 3 *Saldana*, 324 N.W.2d at 230. For example, in *United States v. Sloan*, the court overturned an
 4 appellant's conviction for rape when a worker at a rape crisis center who counseled the victim after
 5 her hospital examination testified that she was "shocked, nervous, tense, and shakey." 811 F.2d 1359,
 6 1364 (10th Cir. 1987). The prosecution proffered this testimony to show that the victim was held
 7 against her will during the rape. *Id.* The court held that such an introduction was prejudicial error even
 8 in the absence of the witness using the words "rape trauma syndrome" because the connection
 9 between the victims' general symptoms and the stated conclusion that she was raped was too tenuous.
 10 *Id.* In other words, because the probative value of the general symptoms was so low the testimony had
 11 to be excluded in the face of the massive risk of unfair prejudice from such a conclusion. *See id.*

12
 13 As stated above, courts are clear that the prosecution cannot elicit testimony that S.R. suffers
 14 from rape trauma syndrome herself. That is in large part because that is the ultimate issue that the jury
 15 must decide. However, even in the absence of such a specific conclusion wherein Dr. Burgess'
 16 testimony is limited to more general characteristics, the probative value is so low as to demand
 17 exclusion in the face of the risk of unfair prejudice. This Court should exercise its discretion in
 18 excluding this testimony to ensure Mr. Teixeira's Sixth Amendment right to a fair trial.

20 III. CONCLUSION

21 For the foregoing reasons, the defense respectfully requests that the Court exclude Dr. Burgess'
 22 testimony because it is unhelpful to the jury, unreliable, and would create a risk of unfair prejudice
 23 that substantially outweighs any purported probative value.
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Applicant Details

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Last Name	Sinclair											
Citizenship Status	U. S. Citizen											
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Applicant Education

BA/BS From	Southern Oregon University
Date of BA/BS	March 2021
JD/LLB From	University of Oregon School of Law
	http://www.law.uoregon.edu/
Date of JD/LLB	May 18, 2024
Class Rank	5%
Does the law school have a Law Review/Journal?	Yes
Law Review/Journal	No
Moot Court Experience	No

Bar Admission

Prior Judicial Experience

Judicial Internships/Externships	Yes
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This applicant has certified that all data entered in this profile and any application documents are true and correct.

Jones Sinclair

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May 28, 2023

The Honorable Jamar K. Walker
United States District Court, Eastern District of Virginia
Walter E. Hoffman U.S. Courthouse
600 Granby Street
Norfolk, Virginia 23510

Dear Judge Walker:

I am a rising third-year student at the University of Oregon School of Law, applying for the clerkship starting on August 5, 2024. An externship with your court would be an excellent opportunity to jumpstart my legal career and continue refining my legal writing.

My work ethic and persistence drive my success. Prior to law school, I studied political science and sociology while working part time and participating in the National Society of Collegiate Scholars' officer board. During my 1L fall semester, I struggled with adjusting to law school and a new city; however, I persevered and ended the semester in the top 10% of my class. I have continued this record of success for the last year and a half. Based on my experiences, I am confident that I have the work ethic to succeed as a judicial clerk.

I have, and will continue to build, strong legal research and writing skills. Last year, I interned for the United States Bankruptcy Court in Eugene to improve my legal research and writing. In collaboration with the District Court, I observed and practiced legal writing in a variety of practice areas. I discovered my passion for legal writing when first entering my Legal Research and Writing course. I appreciate its unique tempo, which I observed while writing memorandums and an appellate brief. I hope I can observe more legal writing and strengthen my own research and writing skills under your guidance.

My work ethic and legal writing skills will enable me to make a valuable contribution to your chambers. Thank you for your consideration, and I look forward to hearing from you.

Respectfully,



Jones Sinclair

They/Them

Jones Sinclair

1820 Ferry Street, Apt. 319 | Eugene, OR 97401 | jones.k.sinclair@gmail.com | (541) 414-8941

EDUCATION

University of Oregon School of Law, Eugene, Oregon

Juris Doctor expected May 2024; GPA: 3.80/4.00; Rank: 8/167, top 5%

Southern Oregon University, Ashland, Oregon

Bachelor of Science in Political Science, Minor in Sociology, March 2021; GPA: 3.90/4.00, *summa cum laude*.

Honors: William Cornelius Award for Outstanding Student in Pre-law for 2019 – 2020

President's List: 2017–2018, Winter & Spring 2020; Provost's List: Fall 2018, Spring 2019, Fall 2019

SOU National Society of Collegiate Scholars, *President* 2019–2021; *Star Status Coordinator* 2018–2019

EXPERIENCE

United States District Court, District of Oregon Judicial Extern

Eugene, Oregon
Spring 2024

Legal Services of Northern California Legal Extern

Redding, California
Fall 2023

University of Oregon Litigation Lab Participant

Eugene, Oregon
Summer 2023

United States Bankruptcy Court, District of Oregon Legal Intern, Chief Judge Thomas M. Renn

Eugene, Oregon
May 2022 – July 2022

- ❖ Conducted legal research and writing on bankruptcy and district court matters, including Social Security/Disability cases and Torts.
- ❖ Observed bankruptcy and district court hearings.

Southern Oregon University Event Planner & Office Assistant

Ashland, Oregon
October 2019 – June 2021

- ❖ Developed Teaching Pathways programming based on my research.
- ❖ Managed confidential student information for review by scholarship committees.
- ❖ Coordinated with staff to plan university events through committee meetings and emails.
- ❖ Drafted compelling copy and visuals for promotional materials and outreach.

Finish Line Supervisor

Medford, Oregon
May 2019 – September 2019

- ❖ Created new store displays while ensuring compliance with the Americans with Disabilities Act and visual merchandising standards.
- ❖ Answered questions from clients and regional management in phone and email correspondence.
- ❖ Met sales goals by training and providing feedback to sales associates.

SKILLS & INTERESTS American Sign Language ❖ HTML & CSS ❖ Graphic Design



DuckWeb Information System

Name:	Jones K Sinclair	UO ID:	951595969
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High School:		North Medford High School, Jun 01, 2017				
Admit Term:		Fall 2021 Law				
Matric Term:		Fall 2021 Law				
Term:	Fall 2021 Law	Level:	Law			
Subject	Course	Title	Grade	Credit Hours	Quality Points	Repeat
LAW	611	Contracts	A	4.00	16.00	
LAW	613	Torts	B	4.00	12.00	
LAW	615	Civil Procedure	A-	4.00	14.80	
LAW	622	Legal Research & Wr I	A	3.00	12.00	

6/18/23, 8:28 AM

Academic Transcript

			Attempted Hours	Earned Hours	GPA Hours	Quality Points	GPA
Current:			15.00	15.00	15.00	54.80	3.65
Rank Status	Level	Rank	(Out of) Total	N-Way Tie	Top %		
Ranked	1L	14	172		8		
Term:	Spr 2022 Law	Level:	Law				
Subject	Course	Title		Grade	Credit Hours	Quality Points	Repeat
LAW	617	Property		A	4.00	16.00	
LAW	618	Criminal Law		A-	4.00	14.80	
LAW	623	Legal Research & Wr II		A	3.00	12.00	
LAW	643	Constitutional Law I		A-	3.00	11.10	
			Attempted Hours	Earned Hours	GPA Hours	Quality Points	GPA
Current:			14.00	14.00	14.00	53.90	3.85
Rank Status	Level	Rank	(Out of) Total	N-Way Tie	Top %		
Ranked	1L	11	170		6		
Term:	Fall 2022 Law	Level:	Law				
Subject	Course	Title		Grade	Credit Hours	Quality Points	Repeat
LAW	610	Legal Reason & Anlysis		P*	3.00	.00	
LAW	610	Access to Justice		A	3.00	12.00	
LAW	644	Constitutional Law II		A	3.00	12.00	
LAW	648	Bankruptcy		B+	3.00	9.90	
LAW	652	Evidence		B+	3.00	9.90	
			Attempted Hours	Earned Hours	GPA Hours	Quality Points	GPA
Current:			15.00	15.00	12.00	43.80	3.65

6/18/23, 8:28 AM

Academic Transcript

Rank Status	Level	Rank	(Out of) Total	N-Way Tie	Top %		
Ranked	2L	17	162	3	10		
Term:	Spr 2023 Law	Level:	Law				
Subject	Course	Title		Grade	Credit Hours	Quality Points	Repeat
LAW	610	Advcy Top: Oral Argmnt		P*	1.00	.00	
LAW	629	Fundamentals of Loans		A	1.00	4.00	
LAW	637	Trusts & Estates I		A+	3.00	12.90	
LAW	649	Legal Profession		A	3.00	12.00	
LAW	651	Trial Practice		A	3.00	12.00	
LAW	760	Negotiation		A	3.00	12.00	
			Attempted Hours	Earned Hours	GPA Hours	Quality Points	GPA
Current:			14.00	14.00	13.00	52.90	4.06
Rank Status	Level	Rank	(Out of) Total	N-Way Tie	Top %		
Ranked	2L	8	167	3	5		
Transcript Totals							
			Attempted Hours	Earned Hours	GPA Hours	Quality Points	GPA
Total Institution:			58.00	58.00	54.00	205.40	3.80
Transfer:			.00	.00			
Transfer Deductions:				.00			
Overall:			58.00	58.00	54.00	205.40	3.80

RELEASE: 7.2[UO.2]

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Stuart Chinn
 Professor, Associate Dean for Academic Affairs
 University of Oregon School of Law
 1221 University of Oregon
 Eugene, OR 97403-1221
schinn@uoregon.edu
 541-346-5797



5/22/23

Dear Judge Walker:

I am writing in strong support of Jones Sinclair’s application for a clerkship in your chambers. I have had the pleasure of having had Jones as a student in two of my classes, and they performed extremely well. In the Spring of 2022, they earned an “A-” in my Constitutional Law I class, against the backdrop of a class of about 85 students with a mean GPA for the class set at a little lower than a “B.” The following semester in the Fall of 2022, they did even better than that, earning an “A” and one of the top grades in a class of about 105 students. A glance at their transcript confirms that these performances in my classes were very representative of their academic performance more broadly.

Beyond demonstrating excellence in the usual skills that are tested on a law school final exam, what stands out to me about Jones’s performance in both of my classes was their ability to think broadly and creatively in response to some larger doctrinal and policy questions. They demonstrated this, in particular, in response to two essay prompts in my Constitutional Law II exam—one of which concerned an analysis of *Dobbs v. Jackson Women’s Health Organization*, and the other of which concerned the role of the federal courts in advancing policy change. Their answers demonstrated able understanding of some core course themes, along with the ability to synthesize and reorient those themes in ways that diverged from my lectures and analysis.

I have every expectation that the qualities described above would translate extremely well if Jones were hired as a clerk. I have no doubt that they would be a pleasure to work with.

Faculty Offices

1515 Agate Street, 1221 University of Oregon, Eugene OR 97403-1221
 541-346-3837 | FAX 541-346-1564 www.law.uoregon.edu

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If I can provide any further information to help you consider Jones's application, please do not hesitate to contact me at schinn@uoregon.edu or at 541-346-5797.

Sincerely,

A handwritten signature in black ink that reads 'Stuart Chinn'.

Stuart Chinn



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UNIVERSITY OF OREGON
School of Law

June 10, 2023

To Whom It May Concern:

I am writing to recommend Jones Sinclair, a rising third-year student at the University of Oregon School of Law, for a clerkship in your chambers. Based on my experience teaching Jones in three courses, I believe strongly that Jones is well suited to work as a judicial clerk. I recommend Jones without any reservation whatsoever.

Please allow me to begin by introducing myself. I am the Orlando J. and Marian H. Hollis Professor at the University of Oregon School of Law. Before entering academia, I worked for nearly a decade as a federal prosecutor in Oregon and elsewhere. I also served by gubernatorial appointment as chair of the Oregon Criminal Justice Commission. In these two positions, I had extensive interaction with judges, and I came to appreciate the crucial role played by judicial clerks. I take very seriously my obligation to recommend only the most talented students for judicial clerkships.

I met Jones in the spring semester of 2022 when I was teaching Criminal Law, a first-year class. Jones stood out as an insightful contributor in our class discussions. What I admired most is that Jones showed a judiciousness in answering questions: rather than blurt out a response immediately after I posed a question, Jones would pause to reflect and would invariably offer a well-reasoned comment. Jones earned a grade of A-, which was a highly commendable performance in a class that I graded on a strict curve.

I taught Jones in two more classes during the 2022-23 academic year: Evidence (fall 2022) and Legal Profession (2023). Both of these classes required students to memorize complicated rules and apply them to fact patterns. Jones exhibited the same diligence and acumen that I had seen in the spring 2022 semester. I knew I could count on Jones to make valuable comments in class discussions. Jones earned a grade of B+ in Evidence and a grade of A in Legal Profession. The latter grade ranked Jones near the very top of a class that included approximately 70 students. Averaging a grade of A- in three of my classes, Jones definitely seems to belong among a subset of the smartest students in the class of 2024. (I was not surprised to learn that Jones has an overall class standing in the top 10%.)

I have noticed that Jones' out-of-class activities seem highly relevant to a judicial clerkship. This spring Jones has been working as an extern with the U.S. District Court in Eugene. Jones had previously interned with the U.S. Bankruptcy Court in Eugene. Jones will be

FACULTY OFFICES

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externing with a Redding-based legal aid office next fall. The insight gained from these various experiences will allow Jones to hit the ground running as a judicial clerk in 2024.

I will close by commenting on Jones' character. I have gotten to know Jones fairly well, due in part to the fact that we both hail from Southern Oregon. Jones is humble and respectful toward all people. Classmates and teachers all seem to hold Jones in high regard. Well prepared, punctual, and diligent, Jones sits in the front of each class and steps in when other classmates do not want to volunteer. Jones chooses words carefully and takes a balanced perspective on issues arising in the criminal justice system. I have no reason to doubt Jones' integrity. In sum, I believe Jones has the sort of character that a judicial clerkship requires.

Thank you very much for your consideration of this letter. If there is any way I can be helpful to you as you evaluate Jones' application, please do not hesitate to contact me. My email address is lininger@uoregon.edu, and my direct line is 541-346-3662.

Respectfully yours,



Tom Lininger
Orlando J. and Marian H. Hollis Professor



June 13, 2023

The Honorable Jamar K. Walker
United States District Court for the Eastern District of Virginia
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, Virginia 23510

Dear Judge Walker:

Jones Sinclair is applying for a clerkship in your court after their graduation in 2024. Jones is a strong student, and they will be a capable judicial clerk. I recommend Jones to you with enthusiasm.

Jones was a student in my year-long Legal Research and Writing course at the University of Oregon School of Law during their first year. Jones produced exceptional work in my class throughout the year. They prepared thoroughly for every class and conference and made effective use of my critiques to improve their work. Although Jones came to law school with strong writing and analytical skills, they were eager to keep honing those skills in class. In both semesters, they earned among the highest scores on the final research and writing projects. In the spring, they wrote a clear and persuasive appellate brief on a complex disability law issue. In their oral argument on the same issue, they showed real fluency with the law and facts, and the judges were uniformly impressed with Jones's responsiveness and professionalism.

Jones's impressive skills go well beyond written analysis. In the spring semester of my course, Jones earned a high score on their independent research project, showing facility researching federal law using online research platforms. Throughout the year, Jones was a somewhat more reserved participant in class discussions and group work, but the quality of their contributions was always high. Their classmates and I welcomed and appreciated their insights. In Legal Research and Writing, "A" grades are hard to come by, so their "A" grades in both semesters of my class demonstrate their strong research, writing, and analytical skills.

This past academic year, I had the opportunity to supervise Jones's upper-level research paper. Jones researched bankruptcy law and barriers to access that create inequities across socioeconomic lines. Unsurprisingly and with minimal guidance, their research was thorough, and the paper was well organized and clearly written. They met every deadline for providing drafts and incorporating feedback. It was a pleasure to work with them on this project.

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I am certain Jones will be a credit to the profession after graduating, and I am confident that they would be a valuable addition to the court's chambers. I encourage you to consider Jones as you review clerkship applicants. If I can answer any questions or offer additional insights, please do not hesitate to call me at (541) 346-5135 or email me at efrost@uoregon.edu.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Elizabeth', with a large, stylized loop at the end.

Elizabeth Ruiz Frost
Professor, Legal Research and Writing

Jones Sinclair

1820 Ferry Street, Apt. 319 | Eugene, OR 97401 | jones.k.sinclair@gmail.com | (541) 414-8941

WRITING SAMPLE

The attached writing sample is an excerpt from an appellate brief. I drafted this sample for the spring semester of my Legal Research & Writing class. In this exercise, a student sought a waiver of a university's no-pets policy in a specific dorm for her disability. The college offered her housing with her dog in another dorm, but the student dropped out and sued. The district court granted summary judgment to the college, and the student appealed. I represented the college.

ARGUMENT

The Court should affirm summary judgment. Since Wallace is not a service animal, Rosoff cannot prevail on her claim under the Americans with Disabilities Act (ADA), 42 U.S.C. §12182 (2018). Similarly, she cannot prevail on her claim under the Fair Housing Act (FHA), 42 U.S.C. § 3604 (2018), because her accommodation is unnecessary and unreasonable.

I. Ashland College cannot be obligated to accommodate Wallace under the ADA because he is not a service animal.

Since Wallace is not a service animal, Ashland College is not obligated to accommodate him under the ADA. Under ADA requirements to modify policy if the modification is necessary and reasonable, modifications for a service animal are generally required. 42 U.S.C. §12182(b)(2)(A)(ii); 28 C.F.R. § 36.302 (2020). However, a dog cannot qualify as a service animal unless the dog is trained to perform tasks for an individual with a disability's benefit. 28 C.F.R. § 36.104 (2020).

A service dog's tasks must directly relate to the individual's disability but cannot include emotional support, well-being, comfort, and companionship. *Id.* While there is no requirement to the number or type of tasks, the tasks cannot be assignable to the dog's breed or dogs in general. *Green v. Hous. Auth. Of Clackamas Cnty.*, 994 F. Supp. 1253, 1256 (D. Or. 1998); *Prindable v. Ass'n of Apt. Owners of 2987 Kalakaua*, 304 F. Supp. 2d 1245, 1256-57 (D. Haw. 2003), *aff'd sub nom. Dubois v. Ass'n of Apt. Owners of 2987 Kalakaua*, 453 F.3d 1175 (9th Cir. 2006).

A dog cannot acquire these tasks without some training by a trainer or the individual with a disability. *Prindable*, 304 F. Supp. 2d at 1257. This training requires support from more than mere anecdotal evidence and unsupported averments. *Id.* Although there is no specific requirement for the amount and quality of training, basic

Brief for Appellee
Bar #XXXXXX

obedience training is insufficient. *Green*, 994 F. Supp. at 1256; *Davis v. Ma*, 848 F. Supp. 2d 1105, 1115 (C.D. Cal. 2012). For example, in *Davis*, the court ruled a puppy was not a service animal when it only had some obedience training and still relieved itself indoors regularly. 848 F. Supp. 2d at 1110. The owner claimed he trained the dog himself but could not recall when and where he learned about service dog training. *Id.* at 1111. The court reasoned that the puppy cannot qualify as a service animal without some training to ameliorate the owner's disability. *Id.* at 1115-16.

Wallace cannot be a service animal because he is not trained to perform qualifying tasks. First, Wallace provides only emotional support, well-being, comfort, or companionship assignable to dogs in general. Rosoff claims that Wallace's presence, breathing, and heartbeat calm her down; however, all dogs have a presence, breathing, and heartbeat. E.R. 11. She states Wallace's eating schedule keeps her accountable, but all dogs eat. E.R. 11. While Rosoff claims Wallace "knows" and "responds" to her panic attacks, she cannot identify a specific task Wallace performs that is distinct from emotional support and comfort. E.R. 11. Since Wallace provides only emotional support and tasks assignable to dogs in general, he cannot qualify as a service animal.

Moreover, Rosoff only provided mere anecdotal evidence and unsupported averments of sufficient training. In *Davis*, a dog with basic obedience training who regularly relieved itself indoors was not a service animal. Here, Wallace underwent obedience training and still relieves himself indoors at least monthly. E.R. 12, 21. While the Rosoffs claim that they spent months working with Wallace, this training is like the owner's work in *Davis*. E.R. 22. Neither identify when and where they learned about service dog training. E.R. 22. For these reasons, Wallace lacks training outside of mere

Brief for Appellee
Bar #XXXXXX

anecdotal evidence and unsupported averments and cannot be a service dog. Therefore, Ashland College cannot be obligated to accommodate Wallace under the ADA.

II. Rosoff's accommodation is not required by the FHA because it is unnecessary and unreasonable.

Ashland College cannot be required under the FHA to grant Rosoff's request. To make a claim under 42 U.S.C. § 3604(f)(3), a plaintiff must prove the following elements: that they are disabled within the meaning of the FHA, that the defendant knew of the disability, that the accommodation is necessary, that the accommodation is reasonable, and that the defendant refused to make the requested accommodation. *DuBois v. Assn. of Apt. Owners of 2987 Kalakaua*, 453 F.3d 1175, 1179 (9th Cir. 2006). In this case, Rosoff has a qualifying disability, and Ashland College knew of her disability. Ashland College refused the requested accommodation and offered her a waiver of the no-pets policy in other dormitories. However, Rosoff's requested accommodation is both unnecessary and unreasonable.

A. Rosoff's accommodation is unnecessary under the FHA because she can access her choice of housing without the accommodation.

Rosoff's request for a waiver of the no-pets policy in the ARC is unnecessary. An accommodation is unnecessary unless, but for the accommodation, the plaintiff "will likely be denied an equal opportunity to enjoy housing of their choice." *United States v. Cal. Mobile Home Park Mgmt. Co.*, 107 F.3d 1374, 1380 (9th Cir. 1997).

There is no but-for causation without a causal link between the policy and a plaintiff injury. *Id.* at 1381. For example, in *Cal. Mobile*, the court found no causal link because the plaintiff failed to show that there was a disability-related injury without the accommodation. *Id.* at 1381. A mother requested that her mobile home park waive parking fees for the babysitter of her child with a disability. *Id.* at 1376. The park refused.

Brief for Appellee
Bar #XXXXXX

Id. Although free spaces were further away, the babysitter could park there without the child losing caretaking services and therefore housing. *Id.* Since the individual with a disability did not link the policy to a loss of housing, the parking fee waiver was a convenience rather than a necessary accommodation. *Id.* at 1380-1382.

Preferential treatment is only necessary if the plaintiff would lose opportunity to housing without it. *Giebeler v. M & B Assocs.*, 343 F.3d 1143, 1151 (9th Cir. 2003). In *Giebeler*, an individual could not meet income requirements due to his disability without a cosigner. *Id.* at 1145. He sought a waiver of their no-cosigner policy; however, the apartment refused. *Id.* at 1146. The *Giebeler* court held the policy waiver was necessary because the preferential treatment ensured the individual's equal opportunity to housing. *Id.* at 1147-48, 1150-51. While he could afford the apartment, he would lose housing without the policy waiver and an opportunity to prove income in a different way. *Id.* at 1157.

Rosoff cannot prove but-for causation nor a causal link because living in the ARC is a convenience. As the child in *Cal. Mobile* accessed housing with her caretaking services without the parking fee waiver, Rosoff can access on-campus housing with her assistance animal without placement in the ARC. E.R. 15. Neither individual lost housing without the accommodation. As the residents in *Cal. Mobile* have the same choice as other residents to pay the parking fee or park elsewhere, here also every student at Ashland College has the same choice of on or off campus housing rather than choosing a specific dorm. E.R. 13, 15. Both individuals had the same choices as other residents without accommodation. While Ashland College's newest dorm may be better than the other dormitories, Rosoff cannot identify a link between living in the ARC and a loss of

Brief for Appellee
Bar #XXXXXX

housing; therefore, the Court should find prioritizing Rosoff for the ARC a convenience and unnecessary. E.R. 11, 15.

Without a causal link, Rosoff's request is preferential treatment not required by the FHA. While the *Giebeler* individual could not achieve equal opportunity to housing without the policy waiver, here Rosoff has housing and the same opportunity as other students. E.R. 15. To illustrate, all students have the same choice of on or off campus housing. E.R. 13, 15. While students list dorm preferences and demand does not typically exceed supply, Ashland College cannot guarantee student preferences. E.R. 13-14. Only ten percent of students can reside in the ARC. E.R. 13. When Rosoff chose to live on-campus, she received housing outside of her preference but equal to all Ashland College students. E.R. 15. Since she did not lose housing, prioritizing Rosoff for the ARC is preferential treatment unjustified by the lack of equal opportunity shown in *Giebeler*. E.R. 13. Thus, the Court should find that Rosoff's accommodation is unnecessary.

B. Rosoff's accommodation is unreasonable under the FHA because the costs of the accommodation place an undue burden on Ashland College.
Rosoff's request for a room in the ARC with Wallace is unreasonable.

Accommodations are unreasonable when they place an undue financial or administrative burden on a housing provider. *Prindable*, 304 F. Supp. 2d at 1257. An undue burden exists when an accommodation's cost outweighs the plaintiff's benefits. *Janush v. Charities Hous. Dev. Corp.*, 169 F. Supp. 2d 1133, 1136 (N.D. Cal. 2000). Although past accommodations may be evidence of reasonableness, each accommodation must be considered on an individual, fact-intensive basis. *Giebeler* 343 F.3d; *Janush* 169 F. Supp. 2d. at 1136.

Brief for Appellee
Bar #XXXXXX

Rosoff's accommodation is unreasonable because Ashland College's costs outweigh the benefits of allowing Wallace in the ARC. Twenty percent of ARC residents have an animal allergy, phobia, or both; therefore, shedding will harm allergic residents. E.R. 15. Wallace is a Great Pyrenees, which shed heavily. E.R. 12, 23. Hence, Ashland College would need to retrofit the ARC's entire HVAC system or move all allergic students out to accommodate Wallace. E.R. 15. Additionally, to maintain current levels of food safety in the ARC with Wallace, Ashland College will need to change food safety protocols and incur additional costs. The ARC is the only dorm with food service areas incorporated into the design. E.R. 14. Wallace sheds and relieves himself indoors. E.R. 12, 23. Although assistance animals typically stay in an owner's room, Wallace must travel through the ARC for natural relief and cannot be restricted from dining areas in the ARC's open design. E.R. 14, 19. Thus, the costs of a new HVAC system and food safety protocols impose an undue burden on Ashland College.

Further, Ashland College would bear additional administrative costs to enforce the ARC's 24-hour quiet rule. E.R. 13. Wallace is a Great Pyrenees, which are known for their "booming" barks. E.R. 23. While Wallace only barks a few times each day, students may prefer the ARC for its quiet atmosphere, and students will likely submit more noise complaints in response to barking. E.R. 12-14. Ashland College will spend more time addressing increased student complaints and bear an undue burden. Finally, although Rosoff believes the community will alleviate some aspects of her disability, Wallace provides similar support; therefore, there is little additional benefit to her placement in the ARC. E.R. 11.

Brief for Appellee
Bar #XXXXXX

As a result, the Court should find Rosoff's accommodation unreasonable. While Ashland College accommodated service animals in the ARC previously, courts consider each accommodation on an individual, fact-intensive basis. E.R. 14. Wallace is a 100-pound Great Pyrenees who barks, sheds a lot, and relieves himself indoors. E.R. 12, 23. Based on the burden associated with Wallace, the Court should find Rosoff's accommodation unreasonable.

CONCLUSION

Overall, Rosoff cannot prevail on either of her accommodation claims. She cannot make an ADA claim because Wallace is not a service animal. She cannot make an FHA claim because the accommodation is unnecessary and unreasonable. Therefore, the Court should affirm summary judgment.

Brief for Appellee
Bar #XXXXXX

Applicant Details

First Name	Bachittar											
Last Name	Singh											
Citizenship Status	U. S. Citizen											
Email Address	basingh@crimson.ua.edu											
Address	<table><tr><th>Address</th></tr><tr><td>Street</td></tr><tr><td>301 Helen Keller Blvd, Apt. 6113</td></tr><tr><td>City</td></tr><tr><td>Tuscaloosa</td></tr><tr><td>State/Territory</td></tr><tr><td>Alabama</td></tr><tr><td>Zip</td></tr><tr><td>35404</td></tr><tr><td>Country</td></tr><tr><td>United States</td></tr></table>	Address	Street	301 Helen Keller Blvd, Apt. 6113	City	Tuscaloosa	State/Territory	Alabama	Zip	35404	Country	United States
Address												
Street												
301 Helen Keller Blvd, Apt. 6113												
City												
Tuscaloosa												
State/Territory												
Alabama												
Zip												
35404												
Country												
United States												
Contact Phone Number	559-960-6090											

Applicant Education

BA/BS From	University of California-Davis
Date of BA/BS	September 2011
JD/LLB From	The University of Alabama School of Law
	http://www.law.ua.edu
Date of JD/LLB	May 8, 2024
Class Rank	I am not ranked
Law Review/Journal	Yes
Journal(s)	Alabama Civil Rights & Civil Liberties Law Review
Moot Court Experience	No

Bar Admission

Prior Judicial Experience

Judicial Internships/ Externships	Yes
--------------------------------------	-----

Post-graduate Judicial
Law Clerk **No**

Specialized Work Experience

Specialized Work
Experience **Habeas**

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**This applicant has certified that all data entered in this profile and
any application documents are true and correct.**

BACHITTAR ANOOP SINGH (He/Him)

ਬਚਿੱਤਰ ਅਨੂਪ ਸਿੰਘ (Punjabi) • बचितर अनूप सिंह (Hindi) • (Punjabi/Urdu) بچتر انوپ سنگھ

basingh@crimson.ua.edu • bachittarsingh1469@gmail.com • 1 (559) 960-6090

Primary Address: 301 Helen Keller Blvd. Apt. 6113, Tuscaloosa, AL 35404 • Secondary Address: 6680 W. Lucas Dr., Fresno, CA 93722

June 7, 2023

The Honorable Judge Jamar K. Walker
United States District Court for the Eastern District of Virginia
Walter E. Hoffman United States Courthouse
60 Granby Street
Norfolk, VA 23510

Dear Judge Walker,

I am currently completing my final year at the University of Alabama School of Law and I am writing to express my keen interest in a clerkship in your chambers for the 2024-2025 term.

I firmly believe that my experiences and educational background will align with your chambers' approach. Serving as a Senior Editor of the Alabama Civil Rights & Civil Liberties Law Review, the 3L Representative to the Student Bar Association's Elections Committee, and the Vice Chairperson of the DEI Committee have enabled me to develop a keen eye for detail and an appreciation for the complexities of law.

My internship with the Federal Public Defender's Capital Habeas Unit in the Middle District of Alabama has honed my ability to work through nuanced legal issues and has instilled in me a deep commitment to justice. Similarly, as a Law Clerk at the Alabama Disabilities Advocacy Program, I developed my skills in thorough legal research and advocacy. I am confident that these experiences will be invaluable in assisting you with the judicial process.

As a law clerk, I fully appreciate the importance of trust, discretion, and a steadfast commitment to the court's dignity and high standards. My time as a Judicial Extern under the mentorship of the Honorable Senior Judge Myron H. Thompson reinforced these values and the necessity of maintaining absolute confidentiality. I am enthusiastic about bringing these critical understandings to your chambers, and I assure you of my unflinching discretion and dedication.

I am aware of the demands of a law clerk position and am prepared to work beyond standard hours. I see this opportunity not as merely a job, but as a chance to make a significant impact on important legal matters, helping individuals navigate the legal process and gaining invaluable experience that will shape my future legal career.

Thank you for considering my application. I look forward to the potential opportunity to discuss my application further.

Respectfully,

Bachittar Anoop Singh

BACHITTAR ANOOP SINGH (He/Him)

ਬਚਿੱਤਰ ਅਨੂਪ ਸਿੰਘ (Punjabi) • बचि़तर अनूप सिंह (Hindi) • (Punjabi/Urdu) بچتر انوپ سنگھ

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EDUCATION

THE UNIVERSITY OF ALABAMA SCHOOL OF LAW, Tuscaloosa, AL

Juris Doctor Candidate, May 2024

Honors: Merit Scholarship Recipient 2021-2024 • Awarded *Dean's Community Service Award* • Awarded *Student Pro Bono Award* • Awarded *Order of Samaritan*

Activities: Vice Chairperson, *DEI Committee* • Senior Editor, *Alabama Civil Rights & Civil Liberties Law Review (Vol. 14, and Vol. 15)* • Founder, *Middle Eastern/South Asian Law Students Association* • J.D. Admissions Student Ambassador • Class Representative, *SBA Elections Committee* • Member, *Black Law Students Association* • Member, *OUTLaw*

THE UNIVERSITY OF CALIFORNIA, Davis, CA

B.A. in Middle East/South Asia Studies (focus in Religion in ME/SA), Sept. 2011

B.A. in Religious Studies (focus in Entomology), Sept. 2011

Activities: Co-Founder, *Middle Eastern & South Asian Students' Council* • Co-Founder and Board Member, *Bhagat Puran Singh Health Initiative* • Founder and Executive Member, *Sikh Cultural Association* • Tutor (Math and Biology), *Davis Senior High School*

LEGAL EXPERIENCE

NATIONAL HEALTH LAW PROGRAM (NHLP), Los Angeles, CA

Spitzer Intern, May 2023 – Present

FOSTER LAW FIRM, Vestavia Hills, AL

Law Clerk, Oct. 2022 – Present

- Assist with case specific research, including drafting memoranda and motions, researching case law and any legal precedent where relevant;
- Analyze legal documents and briefs, ensuring accurate state and depiction of facts, case law and precedent provided.

U.S. DISTRICT COURT FOR THE MIDDLE DISTRICT OF ALABAMA,

Montgomery, AL

Judicial Extern to the Hon. Senior Judge Myron H. Thompson, Aug. 2022 – May 2023

- Conducted in-depth legal research on relevant statutes, case law and legal precedent; and
- Drafted court documents including sentencing memoranda, judicial opinions and orders, and other legal documents as directed by Judge and Court Clerk.

ANONYMOUS ACADEMICS LLC, Washington, D.C.

Legal Research Assistant, Feb. 2023 – April 2023

- Assisted with project research and writing as requested in relation to environmental, social, and governance (ESG) audits.

JOHNSON FISTEL, LLP, San Diego, CA

Law Clerk, Oct. 2022 – Jan. 2023

- Provided support to associates and partners by conducting legal research;
- Analyzed legal documents and briefs, ensuring accurate state and depiction of facts, case law and precedent provided;
- Prepared a variety of legal documents including affidavits, petitions, and pleadings; and
- Drafted court documents and supporting papers.

ENSAAF, INC., Pleasanton, CA

Program Director, Sept. 2011 – Oct. 2022; *Various Other Positions*

- Organized and managed the Punjab Documentation Project (PDP); the largest initiative in the history of India to document disappearances and unlawful killings by the Indian security forces;
- Translated primary source documents, including legal documents, from Punjabi, Hindi and Urdu to English;
- Classified and analyzed court documents, census lists, affidavits, and other legal documents to identify senior security officials who perpetrated gross human rights violations in Punjab, India; and
- Drafted case documents and assist in the preparation of legal documents and other materials.

THE UNIVERSITY OF ALABAMA SCHOOL OF LAW, Tuscaloosa, AL

Research Assistant for Professor Shalini B. Ray, May 2022 – Oct. 2022

- Conducted in-depth legal research on various topics concerning administrative agency law and immigration law, specifically in relation to Title 42, Deferred Action for Childhood Arrivals (DACA), and Migrant Protection Protocols (MPP).

THE MIDDLE DISTRICT OF ALABAMA FEDERAL DEFENDER PROGRAM, Montgomery, AL

Capital Habeas Unit (CHU) Legal Intern, June 2022 – Aug. 2022

- Assisted the teams in providing representation to persons charged with federal crimes in the twenty-three southeastern counties of Alabama and to people on Alabama's death row whose appeals are entering federal *habeas corpus*; and
- Assisted attorneys and investigators at all stages of client representation, including interviewing clients and witnesses, reviewing, and organizing discovery materials, researching federal constitutional and criminal law issues, and investigating and preparing cases for pleadings, hearings and/or trials.

ALABAMA DISABILITIES ADVOCACY PROGRAM (ADAP), Tuscaloosa, AL

Law Clerk, May 2022 – Aug. 2022

- Advocated for individuals entitled to Home and Community-Based Waiver Service in the State of Alabama;

- Helped detainees at the Taylor Hardin Secure Medical Facility secure their constitutional right to treatment under the standards of *Wyatt v. Stickney* and the Americans with Disability Act (ADA); and
- Assisted attorneys and investigators at all stages of client representation, including reviewing and organizing discovery materials, researching state and federal constitutional issues, and preparing cases for hearings, litigation, and/or trial.

IMMIGRANT DETENTION DEFENSE BOARD (IDDB), Tuscaloosa, AL

Board Member, Aug. 2021 – April 2022

- Researched and drafted federal *habeas corpus* petitions for individuals detained by I.C.E. in the Etowah County Detention Center in Alabama; reviewed client intakes; collaborated with Adelante Alabama in hosting “Know Your Rights” training for detainees.

THE LAW OFFICES OF ROBERT B. JOBE, San Francisco, CA

Legal Translator, May 2019 – March 2020

- Conducted-virtual and in-person-client intake interviews at a nationally recognized asylum and deportation defense firm based in San Francisco, California; and
- Translated legal documents, witness testimonies, affidavits, and other primary source documents, from Punjabi, Hindi and Urdu to English.

PUBLICATIONS & RESEARCH ACKNOWLEDGEMENTS

- Deepa Das-Acevedo, *Autocratic legalism in India: A roundtable*, 15 JINDAL GLOBAL L. REV. (2022), available at: <https://doi.org/10.1007/s41020-022-00171-y>.
- Law, Y., & Rosenheim, J. A. Acknowledgments. *Effects of combining an intraguild predator with a cannibalistic intermediate predator on a species-level trophic cascade*. Ecology, Volume 92, Issue 2, 2011, Pages 333-341.

COMMUNITY SERVICE

JAKARA MOVEMENT, Fresno, CA

Youth Organizer and Volunteer, June 2008 – Present

THE APPELLATE PROJECT (TAP), Washington, D.C.

Mentee, Sept. 2022 – May 2023

FRESNO CHAFFEE ZOO, Fresno, CA

Zookeeper Assistant, June 2006 – Aug. 2007

LANGUAGES & OTHER INTERESTS

LANGUAGES

- Punjabi (Native) • Urdu (Fluent) • Hindi (Fluent) • English (Fluent)

OTHER INTERESTS

- Indo-Greek Architecture • Hiking • Camping • Backpacking • Anime • Entomology

BACHITTAR ANOOP SINGH (He/Him)

ਬਚਿੱਤਰ ਅਨੂਪ ਸਿੰਘ (Punjabi) • बचि़तर अनूप सिंग (Hindi) • (Punjabi/Urdu) بچتر انوپ سنگھ

basingh@crimson.ua.edu • bachittarsingh1469@gmail.com • 1 (559) 960-6090

Primary Address: 301 Helen Keller Blvd. Apt. 6113, Tuscaloosa, AL 35404 • Secondary Address: 6680 W. Lucas Dr., Fresno, CA 93722

Unofficial Academic Transcript

Institution Name: The University of Alabama School of Law

Student ID: 12182099

<u>Course</u>	<u>Professor</u>	<u>Grade</u>	<u>Term</u>
LAW 668 Complex Litigation	Adam Steinman	B-	Spring 2023
LAW 690 Water Law	Heather Elliott	B+	Spring 2023
LAW 795 Judicial Externship	Hon. S. Judge Myron H. Thompson	Pass (P/F)	Spring 2023
LAW 798 Advanced Fed. Gov. Contracts	Cameron Fogle	A	Spring 2023
LAW 818 Advanced Contracts	Yonathan Arbel	A-	Spring 2023
LAW 819 International Human Rights Law	Clare Ryan	B	Spring 2023
LAW 631 Employment Law	Deepa Das Acevedo	C+	Fall 2022
LAW 741 Federal Government Contracts	Cameron Fogle	B-	Fall 2022
LAW 744 Legislative Drafting	Othni Lathram	B+	Fall 2022
LAW 753 Racial Equity Audits in ESG	Johnjerica Hodge, India Williams	B	Fall 2022
LAW 795 Judicial Externship	Hon. S. Judge Myron H. Thompson	Pass (P/F)	Fall 2022
2L Term GPA (2022-2023)		3.05	
LAW 600 Contracts	Gene Marsh	C+	Spring 2022
LAW 601 Property	Fredrick Vars	B	Spring 2022
LAW 609 Constitutional Law	Paul Horwitz	C+	Spring 2022
LAW 648 Legal Research/Writing II	Kimberly Boone	B-	Spring 2022
LAW 742 Legislation and Regulation	Deepa Das Acevedo	B	Spring 2022
LAW 602 Torts	Benjamin McMichael	C+	Fall 2021
LAW 603 Criminal Law	Joyce Vance	B-	Fall 2021
LAW 608 Civil Procedure	Adam Steinman	B	Fall 2021
LAW 610 Legal Research/Writing I	Kimberly Boone	B-	Fall 2021
LAW 713 Introduction to Study of Law	Anita Kay Head	Pass (P/F)	Fall 2021
1L Term GPA (2021-2022)		2.64	
CUMULATIVE GPA		2.81	
LAW 646 The Law of War	Daniel Joyner	-	Fall 2023
LAW 660 Legal Profession	Shalini Ray	-	Fall 2023
LAW 665 Criminal Defense Clinic	Amy Kimpel, Yuri Linetsky	-	Fall 2023
LAW 665 Criminal Defense Clinical Course	Amy Kimpel, Yuri Linetsky	-	Fall 2023
LAW 683 Administrative Law	Shalini Ray	-	Fall 2023
LAW 821 Public Interest Lawyering	Glory McLaughlin	-	Fall 2023



ALABAMALAW
THE UNIVERSITY OF ALABAMA

Office of the Dean

8 June 2023

Re: Recommendation for Bachittar Anoop Singh

Dear Judge:

Bachittar Singh is a rising 3L at the University of Alabama School of Law. I write to commend him to you for a clerkship in your chambers. I do so with unbridled enthusiasm.

Bachittar is a person with special experience, perspective, and talent. I dare say that Alabama Law has never had a student quite like him – and I intend this in the most complimentary way possible. He came to us, not directly from college, but after having spent more than a decade working for (and eventually exercising directorial responsibility in) an organization whose purpose is to gather documentary and other evidence concerning the Sikh experience in India. It's work about which he is passionate, knowledgeable, and articulate.

Alabama is not an obvious destination for a person with his background and interests. So he took a chance in coming to us. But we have benefitted in countless ways from his membership in our community, and I believe he would tell you that he has flourished here. He has done so in his course work (which has been meaty and substantive), through his extracurricular portfolio (which has been truly impressive in scope and depth), and through his participation in the daily life of the Law School (and beyond).

I got to know Bachittar before he matriculated here. Since then, he and I have had regular, lengthy, and deep conversations about law, society, and his personal experiences. From the beginning, he displayed a maturity, perceptiveness, and knowledge that have had a profound impact on me, even as a grizzled veteran in academe. He has a keen analytical mind and an ability to think across multiple levels of abstraction simultaneously. His grades in courses do not – and could not – fully comprehend scope of his impressive gifts.

He has bolstered his academic experience with a host of additional experiences: as a judicial extern to a celebrated Senior District Judge for the Middle District of Alabama; as a clerk for law firms in Birmingham, Alabama, and San Diego, California; as a research assistant for one of my professorial colleagues; as a legal research assistant for a firm in Washington, DC; as a legal intern for the Federal Defender Program in the Middle District of Alabama; as a law clerk for the Alabama Disabilities Advocacy Program; as a Board Member for the Immigrant Detention Defense Board in Tuscaloosa; and (currently) as a Spitzer Intern for the National Health Law Program in Los Angeles.

Mark E. Brandon - Dean and Thomas E. McMillan Professor of Law

Office of the Dean | 251 Law Center | Box 870382 | 101 Paul W. Bryant Drive | Tuscaloosa, AL 35487-0382
205-348-5117 | Fax 205-348-3917 | mbrandon@law.ua.edu

Letter of Recommendation
Bachittar Anoop Singh
Page 2

Because my primary responsibilities have been administrative, I have not had an opportunity to engage Bachittar in the classroom. On the basis of my extensive interactions with him, however, I have every confidence that he will be a judicial clerk of genuine excellence. He reads well (and widely). He processes information rapidly. He analyzes cogently. He writes well. And he is able to manage multiple assignments with ease. I am pleased to recommend him for the important work in your chambers.

Please don't hesitate to let me know if you have questions or would like additional information.

Very truly yours,


June 20, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I write today to give my full support of Bachittar Singh's application to serve as your law clerk during the 2024-25 term. Bachittar is a strong writer with excellent analytical skills and an impeccable work ethic. His oral communication skills are also exceptional. Although Bachittar's law school transcript is different than the typical clerkship applicant, he has the ability and demeanor to be an excellent judicial law clerk.

Bachittar was a student in my Federal Government Contracts class in the fall of his second year and then did an independent study with me the following spring. His performance across these two semesters was indicative of both his overall skills and nontraditional transcript. In my Federal Government Contracts class, Bachittar was a star student in the classroom. He was always prepared and asked thoughtful questions. We often met outside of class to continue our discussions, and his understanding of the course material was noteworthy. At the end of the semester, I considered Bachittar one of my top students and we began discussing career opportunities in government contracts. Despite this consistently positive experience, Bachittar's performance on my exam was disappointing. My sincere belief, both in terms of my class and in terms of his overall law school performance, is that high-stakes exams obscure what Bachittar has to offer. He is as capable as students near the top of the class but some of his grades do not reflect this.

Bachittar's performance in my independent study confirmed my opinions regarding his many strengths. During my Government Contracts class, one topic we covered was the Small Business Administration's "set-aside" programs. Some of these programs reserve certain contracting opportunities for small business owned by "socially disadvantaged individuals," who are defined as people "who have been subjected to racial or ethnic prejudice or cultural bias within American society because of their identities as members of groups and without regard to their individual qualities." I noted in class that some contractors had challenged the constitutionality of these set-aside programs and said that their long-term viability was unclear. Bachittar met with me after class and asked a series of follow-up questions about the nature and extent of the constitutional challenges. When I candidly admitted my limited knowledge on the subject, Bachittar asked if he could do an independent study with me and write a paper about the issue. I agreed, and the experience was extremely rewarding for both of us. Bachittar's research on the topic was thorough. We had engaging weekly discussions. His final paper was well structured and well-reasoned. In the same semester, I oversaw another independent study with a student who was ranked near the top of the class. Bachittar's work during the semester was superior to this other student's work in terms of both effort and quality.

My work with Bachittar on his independent study highlighted some of the attributes that would make him a highly effective judicial clerk. Bachittar's intellectual curiosity and the passion for social-justice issues in the law gave rise to the independent study. He approached me with an interesting and well-thought-out proposal. Bachittar was self-motivated and an extremely disciplined worker. He proposed his own research and drafting schedule and adhered to it throughout the semester. The ability to manage a long-term project, like the independent study, is critically important in practice and in chambers, but is becoming a less common trait in law school students. Beyond these tangible, academic skills, Bachittar's demeanor and personality made working with him truly enjoyable. He is kind, considerate, and thoughtful. He works well with constructive feedback. Overall, Bachittar's academic skill combined with the intangible benefits of his demeanor will make him an asset in chambers. A clerkship with you would be a wonderful professional experience for Bachittar. I hope you will give his application serious consideration.

Sincerely,

Cameron W. Fogle

Cameron Fogle - cfogle@law.ua.edu

June 16, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I am writing to enthusiastically recommend Bachittar Singh for a clerkship in your chambers. I was closely involved in recruiting Bachittar to Alabama Law and have since had the pleasure of teaching him in two courses. Beyond this, Bachittar has become a much-valued mentee and aide, playing a crucial role in two conferences I organized while at Alabama Law and liaising between students, faculty, and administrators at the Law School. In my experience, Bachittar's drive, organizational skill, intellectual appetite, and emotional intelligence are without parallel.

When I first met him as a prospective student, Bachittar already had extensive experience with legal systems outside the United States thanks to his work for Ensaaf. I wondered whether this prior knowledge would complicate his law school career, but my concerns were soon laid to rest: regardless of his experience (which is broad) and interests (which are varied) Bachittar approaches every new opportunity with humility and an eagerness to learn. More than any other student I have taught, Bachittar has used his time in law school to experience as many different ways of engaging with the law as possible; his energy and enthusiasm are inspiring.

He understands, however, that energy and enthusiasm are not enough in the legal profession: diligence, accuracy, and intellectual creativity are necessary too. I know this first hand after asking Bachittar to participate in a roundtable on autocratic legalism in India that I organized in 2021; Bachittar not only came excellently prepared to the meeting and contributed to our discussion in key ways, he also took detailed minutes for me to use later on and carefully read the roundtable transcript for accuracy and citations. Others have also quickly recognized his aptitude for legal work: to date he is the only judicial extern from Alabama Law to be hired into the chambers of Judge Myron H. Thompson of the Middle District of Alabama. The sheer variety of Bachittar's activities during law school—he has worked in law firms, judicial chambers, non-profits, as an academic research assistant, with the Federal Defenders, the ADAP, and the IDDB—signals his commitment to becoming the best lawyer he can be.

Some of the qualities that I most appreciate in Bachittar are also likely to make him a valuable addition to your judicial chambers. He is a highly capable and well-informed conversational sparring partner who is nevertheless unfailingly respectful and polite. He is always well-prepared, whether this means doing outside research and writing before a meeting or simply formulating his own thoughts (or both). And he is an exceptionally warm, caring, and perceptive human being: not only from my own experiences, but also from the comments of colleagues and students at Alabama Law, I know Bachittar to be someone who uses his skills and resources in the service of those around him. He is someone I am proud and humbled to have taught.

As the above makes obvious, I recommend Bachittar highly and without reservation. Please feel free to contact me by phone or email if there is any additional information that I can provide.

Yours sincerely,

Deepa Das Acevedo

Associate Professor

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BACHITTAR ANOOP SINGH (He/Him)

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Primary Address: 301 Helen Keller Blvd. Apt. 6113, Tuscaloosa, AL 35404 • Secondary Address: 6680
W. Lucas Dr., Fresno, CA 93722

I prepared the following sentencing memorandum in September of 2022, for the Honorable Senior Judge Myron H. Thompson of the United States District Court for the Middle District of Alabama. The task entailed thorough research on all pertinent issues, case laws, and federal sentencing guidelines associated with the case. I independently conducted all required research for this assignment.

Respectfully,

Bachittar Anoop Singh

MEMORANDUM

To: Judge
From: Bachittar Singh
Date: [REDACTED] 2022
Case: [REDACTED]
Re: [REDACTED] Revocation Hearing

A revocation hearing is set for [REDACTED] on the pending petition for the revocation of defendant [REDACTED] supervised release. The petition contains the following charges:

- (1) Failure to pay restitution as ordered;
- (2) Driving under the influence of alcohol [REDACTED];
- (3) Driving under the influence of alcohol [REDACTED].

Because [REDACTED] is alleged to have failed to pay restitution as ordered in violation of the conditions of his supervised release, and because he is alleged to have committed a Grade C violation, if he is ultimately found guilty you may revoke his term of supervised release and impose a term of imprisonment under 18 U.S.C. § 3583(e)(3) and USSG § 7B1.3(a)(2).

[REDACTED] has pled guilty to both charges of Driving Under the Influence (DUI) in the [REDACTED] District Court on [REDACTED] 202[REDACTED], and is required to have an ignition interlock device installed on his vehicle for a period of one year and to participate in a substance abuse aftercare program.

It is unclear whether [REDACTED] will be contesting any of the charges against him, though it seems unlikely that he will. Probation recommends a sentence of three months' incarceration followed by no supervised release.

MEMORANDUM

I. Defendant's Background

a. Personal Background

██████ is █████ years old and was born in ██████████. ██████████ mother passed away in 2005 due to cancer, and his father resides in ██████████ and is employed as a truck-driver.

██████ was not subjected to any physical or emotional abuse as a child, and he specifically describes his relationship with his mother as "great." His relationship with his father is more difficult and varies depending on his "[father's] mood."

Due to a learning disability, [REDACTED] dropped out of high school and did not earn his GED.

In 2002, [REDACTED] married [REDACTED]. Although the couple subsequently divorced on October [REDACTED], 201[REDACTED], [REDACTED] and his ex-wife continue to remain in a relationship and are currently cohabitating in [REDACTED], alongside their three children: [REDACTED]. Ms. [REDACTED] is a nurse at [REDACTED].

b. Mental Health

The PSR says that [REDACTED] does not have any evidence of having been treated for any mental or emotional problems. In addition, he did not report any family history of mental or emotional health conditions.

c. Substance Abuse

In the PSR interview, [REDACTED] denied a history of, or problem with, alcohol/substance abuse, [REDACTED] has

MEMORANDUM

reported consuming two to three beers once a week. In addition, he admitted that he regularly began using marijuana between the ages of 14 and 16.

The USPO's sentencing recommendation states: "[REDACTED] admits he began abusing alcohol in early 202[REDACTED] and was ultimately arrested for the two driving under the influence of alcohol cases in [REDACTED] that form the basis for the petition to revoke his term supervised release. Since incurring the new law violations, [REDACTED] successfully completed inpatient substance abuse treatment."

d. Criminal History

[REDACTED] has a lengthy criminal history consisting almost entirely of citations in relation to traffic violations, including speeding (nine citations), seatbelt violation (four citations), and no child restraint (three citations).

Apart from his underlying convictions in this case, [REDACTED] was arrested for Driving Under the Influence (DUI) in [REDACTED] and charged with reckless driving. In that case, he was ordered to pay a \$500 fine by the [REDACTED] Probate Court in [REDACTED].

e. Educational and Employment History

[REDACTED] withdrew from high school in the ninth (9th) grade and has not completed his GED. Between 1996 and 2007, [REDACTED] reported working as a laborer [REDACTED]. Thereafter, from May 2007 to August 2007, he was employed as a laborer [REDACTED]. And, between August 2007 to 2017, he was employed as a Heavy Equipment Operator [REDACTED]. More recently, from 2017 to the present, [REDACTED] has been self-employed as the owner of a lawn care service.

MEMORANDUM

II. Underlying Offense and Conditions of Supervised Release

██████ was originally sentenced in 201█ to time served (one day) as to Count One, followed by a three (3) year term of supervised release after having pled guilty to making a false statement to a federal agency under 18 U.S.C. § 1001(a)(2), a Class D felony.

In that case, [REDACTED] was indicted by a Federal Grand Jury for knowingly and willfully making a "materially false, fictitious, and fraudulent statement" to an FBI Special Agent in relation to a [REDACTED] package containing \$[REDACTED] in cash. The Grand Jury determined that he did not return the [REDACTED] package to [REDACTED], as he initially claimed to the FBI Special Agent, and had in fact spent a portion of the \$[REDACTED] on personal expenditures. [REDACTED].

As per his special conditions, [REDACTED] was to make restitution for a total restitution amount of \$[REDACTED] at the rate of not less than \$100 per month and began his term of supervised release on September [REDACTED] 201[REDACTED].

III. Alleged Violation of Supervised Release

On September [REDACTED] 201[REDACTED], [REDACTED] began his term of supervised release, and began to pay restitution in the amount of \$[REDACTED] at the rate of not less than \$100 per month, as is required by the special conditions of his supervised release. However, [REDACTED] has not made any additional payment since [REDACTED] 202[REDACTED], and is currently in default status.

In February 2021, a [REDACTED] Sheriff's Deputy clocked [REDACTED] vehicle traveling at 58 miles per hour (MPH) in a 45 MPH speed zone. After conducting a traffic stop near [REDACTED] home, the Deputy reported a

MEMORANDUM

strong odor of alcohol on [REDACTED]. He administered a field sobriety test and determined that [REDACTED] was "too impaired to safely operate a vehicle." After administering a portable breathalyzer test to [REDACTED], in which his blood alcohol content (BAC) level was recorded at 0.18, the deputy arrested and charged him with Driving Under the Influence (DUI).

Shortly thereafter, in April 2021, an [REDACTED] state trooper conducted a traffic stop on [REDACTED] and administered a portable breathalyzer test. [REDACTED] BAC level was 0.13, and he was arrested and charged with his second Driving Under the Influence (DUI) within a two-month period, in violation of his supervised release.

IV. Events After the Filing of the Revocation Petition

After the filing of the revocation petition, you continued the revocation hearing to allow [REDACTED] to attend substance-abuse treatment [REDACTED] and modified the conditions to add the condition that he is successfully complete the inpatient treatment program at [REDACTED]. He completed the program successfully.

V. Sentencing Options

a. Statutory Requirements

[REDACTED] is alleged to have violated the terms of supervised release by failing to pay restitution as ordered by the United States District Court [REDACTED] and by committing two new law violations of Driving Under the Influence of Alcohol (DUI). Therefore, if he is found guilty of

MEMORANDUM

those charges, you may revoke his term of supervised release and, additionally, impose a sentence of "not more than two (2) years for a Class D felony." 18 U.S.C. § 3583(e)(3).

b. Sentencing Guidelines

When there is more than one violation of the conditions of supervision, the grade of violation is determined by the violation having the most serious grade. Here, all of [REDACTED] violations are Grade C violation; "therefore, the grade of violation is Grade C." USSG § 7B1.1(a)(3)(B).

At the time of the original sentence in 201[REDACTED], [REDACTED] criminal history category was I, with a total offense level of eight (8). The guidelines range here is therefore three (3) to nine (9) months imprisonment, USSG 7B1.4, provided that, where minimum term of imprisonment determined is not more than six (6) months, the minimum term may be satisfied by:

- (A) a sentence of imprisonment; or
- (B) a sentence of imprisonment that includes a term of supervised release that substitutes community confinement or home detention.

USSG 5C1.1(e); see also USSG § 7B1.3(c)(1).

Upon finding of a Grade C violation, the court may:

- (A) revoke probation or supervised release; or
- (B) extend the term of probation or supervised release and/or modify the conditions of supervision.

USSG § 7B1.3(a)(2). No credit toward any sentence of imprisonment ordered shall be given for time [REDACTED] has already served on post-release supervision. See USSG § 7B1.5(b). Additionally, "[a]ny term of imprisonment

MEMORANDUM

imposed upon [] revocation ... shall be ordered to be served consecutively to any sentence of imprisonment that the defendant is serving, whether or not the sentence of imprisonment being served resulted from the conduct that is the basis of the revocation of ... supervised release." Id. § 7B1.3(f).

c. Parties' Recommendations

Probation recommends that [REDACTED] supervised release be revoked and that he be sentenced to three months' imprisonment, consecutive to the sentence imposed in [REDACTED], and followed by no supervised release. The USPO wants no supervised release because [REDACTED] supervised release term started on September [REDACTED], 201[REDACTED], and three years will be up on September [REDACTED], 202[REDACTED] (though the filing of the petition arguably stopped the clock).

According to Probation, [REDACTED] has served [REDACTED] days in custody on the [REDACTED] DUI cases.

We don't have any information about what the government or defense will request, but I imagine the defense will request a concurrent sentence with the [REDACTED] case and/or time served.

d. Bachittar's Recommendation

Here, I see two grounds for a variance. First, [REDACTED] began his term of supervised release on September [REDACTED], 201[REDACTED], and continued to pay restitution at the rate of not less than \$100 per month until [REDACTED] [REDACTED] 202[REDACTED], the date of his last payment. The court should take into consideration that the State of [REDACTED] reported a record number of daily cases between 2,000 and 4,000 new infections of COVID-19 being reported in December of 202[REDACTED]. See WSFA 12 News Staff,

MEMORANDUM

Alabama has reported 95K new COVID-19 cases in December, WSFA 12 News (Dec. 28, 2020, 2:58 PM GMT-6), <https://www.wsfa.com/2020/12/28/alabama-has-reported-k-new-covid-cases-december/>. In addition, at his original sentencing, the Court noted, "[REDACTED] does not appear to have the ability to pay a fine, within the guidelines, in addition to restitution." See [No.] [REDACTED] [of] [REDACTED] [in] [REDACTED]. He was reported to have had a negative monthly cash flow of \$[REDACTED]. *Id.* The court should take this possible (negative) correlation between the COVID-19 Pandemic and the date of [REDACTED] having entered default status into consideration, in addition to the documented financial hardship as noted by the District Court [REDACTED].

Second, as per the Supervised Release Violation Report (the "Report"), the only non-compliance issue during [REDACTED] first two (2) years of supervision was the failure to pay restitution as ordered by the Court. And, since his second DUI charge in April of 202[REDACTED], [REDACTED] has successfully completed inpatient substance abuse treatment at [REDACTED]. The fact that prior to, and subsequently after, this underlying conviction in 201[REDACTED], [REDACTED] has been charged with multiple Driving Under the Influence (DUI) highlights a possible dependence on alcohol. If so, I doubt that a lengthy period of incarceration would be beneficial in significantly addressing the continued risk he would pose upon the completion of his sentence. Perhaps the court could better protect society by requiring [REDACTED] to undergo a psychiatric evaluation to see if he meets the criteria for substance use disorder. Perhaps the court should require participation in a driving school course, a financial management course, a recovery program, such as Alcoholics Anonymous, and/or therapy might better address the underlying cause of [REDACTED] dependency on

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alcohol and his default status. If [REDACTED] maintains his sobriety, he is well-positioned to continue "earning a good income to support himself and his family. He has acquired valuable tools from treatment to live a sober, law-abiding life." See [REDACTED] [in] Supervised Release Violation Report. I might recommend something along the lines of a downward variance of one (1) month of incarceration, followed by two (2) years of supervised release, with a special condition that [REDACTED] continue to pay restitution at a rate determined to be appropriate by the court, attend a driving course, undergo a psychiatric evaluation to see if he meets criteria for substance use disorder, participate in a recovery program, such as Alcoholics Anonymous, and enroll in an inpatient substance abuse treatment program.